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Chowdappa and Others Vs. Chowdappa (Deceased) by L.Rs and Others

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Court : Karnataka

Decided On : Jan-10-2000

Reported in : ILR2000KAR825; 2000(2)KarLJ292

Judge : B.N. Mallikarjuna, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 9, 47 and 151 - Order 7, Rue 7; Specific Relief Act, 1963 - Sections 34; Karnataka Land Reforms Act, 1961 - Sections 44, 45, 48-A, 132(1), 132-A, 133, 133(2) and 134; Hyderabad Tenancy and Agricultural Lands Act - Sections 32 and 99

Appeal No. : Writ Petition No. 2180 of 1999

Appellant : Chowdappa and Others

Respondent : Chowdappa (Deceased) by L.Rs and Others

Advocate for Def. : Sri K. Appa Rao, Adv.

Advocate for Pet/Ap. : Sri N.S. Prasad, Adv.

Judgement :
ORDER

1. This revision under Section 115 of the Code of Civil Procedure is directed against the order of the Civil Judge (Junior Division), Chittapur, Gulbarga District dated 29-5-1999 in Execution Petition No. 45 of 1993 on an application by

judgment-debtors-1 to 5 under Section 9 read with Sections 47 and 151 of the Code of Civil Procedure. The respondents are the decree-holders and as well the other judgment-debtors.

The decree-holders sued out the execution of the decree in O.S. No. 111 of 1963 on the file of the Principal Civil Judge (Senior Division), Gulbarga, in Execution Petition No. 22 of 1981 in the same Court. But subsequently and as the pecuniary jurisdiction of the Civil Judge (Junior Division) was enlarged, the execution was transferred to the Court of the Civil Judge (Junior Division), Chittapur and numbered as Ex. 49 of 1993.

2. In view of the age and the nature of the litigation, it would be necessary to state the facts in detail. Certain Papayya Kalal and Antaiah Kalal, residents of Chittapur Taluk in Gulbarga District were brothers. Plaintiffs are the children and widow of the said Papayya Kalal and Antaiah Kalal. One Gopikishan was a resident of Hyderabad. Defendants 2 to 4 are his sons. It is stated that Papayya and Antaiahwho were Excise Contractors for some time had borrowed certain amount, i.e., a sum of Rs. 1,00,000/- from Gopikishan and did not repay. Therefore, deceased Gopikishan brought a suit before Sadar Adalath, Gulbarga and an award was made in about the year 1937 or so, the judgment-debtors were permitted to pay the suit claim in yearly instalments of Rs. 5,000/-. It would appear the two brothers or their legal representatives paid four instalments regularly but thereafter they did not pay and they were incapable of paying any amount. By that time, it appears, Gopikishan died. Therefore, in about 1346 Fazli, the two brothers parted with the possession of the lands in dispute situated at Chittapur numbering 13 items and put them in possession of defendants 2 to 4 with an agreement that they should cultivate those lands for a period of 20 years, appropriate the income towards the discharge of the debt in entirety and put back the brothers in possession of the property in the year 1960. It is stated that the defendants 2 to 4 failed to comply with the said terms and conditions and in fact colluded with the first defendant and all of them continued to be in possession of the said land and in about the year 1954-55, got the Khatha also changed in their names. Therefore, the plaintiffs - the legal representatives of the two brothers approached the authority for cancellation of the entries made in the Record of Rights and later in

the year 1963 filed Civil Suit O.S. No. 111 of 1963 in the Court of Sub-Judge, Gulbarga for a direction to delete the names of the defendants in the Khatha and for instructing the Deputy Commissioner, Gulbarga District and the other Revenue Authorities to continue the names of the plaintiffs in the Record of Rights.

3. The defendants-1 to 4 resisted the suit by filing a common written statement, denied the averments in the plaint. However, they admitted the money transaction between Gopikishan and Papayya and his brother and also conceded the decree. However, they contended that during 1346 Fazli, they forcibly occupied the suit lands by dispossessing the previous owners Papayya and Antaiah and since then they continue to be in possession of the property. Further they contended that they have entered into an agreement to sell the property in favour of the first defendant and several others and as part performance of the contract, they have put the intending purchasers in possession of the property receiving the total consideration. They also contended that the suit in the present form is not maintainable and the Civil Court has no jurisdiction to entertain the suit and the Civil Court lacked jurisdiction.

During the pendency of the suit and in the month of February 1967, the plaintiffs moved for amendment and sought for relief of declaration and for possession of the properties. This was opposed but the Court permitted the amendment. Issues were framed, parties adduced evidence. The Trial Court after considering both the oral and documentary evidence and after hearing the parties, by judgment dated 12-7-1973 decreed the suit.

4. Aggrieved by the said judgment and decree, defendants-1 to 4 and others appealed before this Court in R.F.A. No. 142 of 1973. A Division Bench of this Court by judgment dated 22-10-1980 dismissed the appealand thereby confirmed the judgment and decree or the Trial Court. In appeal also the plea that the defendants have perfected their title to the said lands by law of adverse possession was not accepted. It is thereafter the plaintiffs sued out the execution in Execution Petition No- 22 of 1981 in the Court of the Civil Judge (Senior Division), Gulbarga. The judgment-debtors opposed the execution.

They also made an application under Sections 132(1) and 133(2) read with Sections 44, 45 and 48-A of the Karnataka Land Reforms Act, 1961 and raised the plea of lack of jurisdiction in the Civil Court to pass the decree. They contended that the judgment and decree in the suit O.S. No. 111 of 1963 is null and void and not enforceable. The Executing Court by order dated 17-4-1985 dismissed this application. Aggrieved by the said order, they approached this Court in Civil Revision Petition No. 1881 of 1985. Hon'ble Mr. Justice Rajendra Babu (as he then was) by order dated 30-6-1989 dismissed the revision holding that there is positive material indicating that no such application was pending for consideration before the Tribunal regarding registration of occupancy rights.

5. Execution proceedings thereafter appeared to have continued. However, judgment-debtors did not stop but made another application LA. No. 12 under Sections 132, 133, 134, 44, 45 and 48-A of the Land Reforms Act and perhaps raised the same question once again. The Executing Court by order dated 23-10-1991 rejected the said application. Aggrieved by the said order, they approached this Court in Civil Revision Petition No. 5109 of 1991. When the matter came up for hearing on 7-8-1996 before brother Justice M.F. Saldanha, while declining to interfere with the order in question, made certain observation which reads thus:--

'. . . . The order passed on LA. No. 12 is an interlocutory order and the application fails principally because the petitioners did not substantiate their plea. I see no reason to interfere with the order in question. However, having regard to the fact that the petitioners have contended that there are some stray references in the record which support them, they are given a fresh opportunity of substantiating their plea before the lower Court if they so desire in the course of the pending proceedings. This is the only direction that is necessary. It is also essential to clarify that if the petitioners are in a position to substantiate their plea that the earlier order being an interim order, there would be no question of bar or res judicata coming in the way of the petitioners in this regard'.

In the meantime, it appears, the matter had been transferred to the Civil Judge (Junior Division) at Chittapur on point of jurisdiction: It is then the judgment-debtors-revision petitioners herein made the application LA. No. 40 under Sections

9 read with Sections 47 and 151 of the Code of Civil Procedure contending that the Court which passed the decree lacked the jurisdiction in view of Sections 32 and 99 of the Hyderabad Tenancy and Agricultural Lands Act and therefore, the judgment and decree is a nullity and unenforceable. The learned Trial Judge after considering the application on merits by order dated 29-5-1999 dismissed it as not maintainable imposing a cost of Rs. 250/-. It is this order that is questioned in this revision.

6. Sri N.S. Prasad, learned Counsel for the revision petitioners contended that as the Civil Court had no jurisdiction to entertain a suit of this nature, the judgment and decree passed by a Court which was not competent and which lacked jurisdiction is a nullity and unenforceable. The question of jurisdiction could be raised even in execution proceedings since it is a question of law and as such the revision petitioners are not estopped nor it is barred by principles of res judicata. In elaborating his arguments, he contended that the very averments in the plaint barred the jurisdiction of the Civil Court for the reason that the plaintiffs made it clear that there was a lease and licence of the properties and as such the provisions of the Hyderabad Tenancy and Agricultural Lands Act No. XXI of 1950 were attracted and Section 99 of the Act barred the jurisdiction of the Civil Court. If at all the landholder intended to take or obtain possession of the land, he or they could have approached only the Tahsildar in view of Section 32(2) of the said Act. Therefore, in view of Sections 32 and 99, the Civil Court, i.e., the Civil Court (Senior Division), Gulbarga had no jurisdiction to entertain the suit and settle the dispute between the parties. In support of his arguments, he relied on several decisions some of which I would refer to little later.

7. Sri K. Appa Rao, learned Counsel for the decree-holders on the other hand contended that what has been raised in execution proceedings being a question of fact, the Executing Court cannot go into those questions and decide the matter afresh. Plaintiffs nowhere pleaded that the suit properties were tenanted properties and there existed the relationship of landlord and tenant between the plaintiffs and the defendants. The plaintiffs' case all along was that the defendants 2 to 4 were in permissive possession of the property for a period of 20 years with a clear understanding to appropriate the income towards the discharge of the debt and to

deliver back possession of the property in the year 1960. The defendants at no point of time raised the plea of tenancy and in fact the suit was proceeded on the basis of the alleged contract and decided. The question now raised being both question of fact and law and as Sections 32 and 99 of the Act XXI of 1950 attracted only those case where the relationship of landlord and tenant existed, it does not lie in the mouth of the revision petitioners to contend that the judgment and decree in O.S. No. 111 of 1963 is a nullity. He further contended that Act No. XXI of 1950 was repealed in the year 1965 by the Karnataka Land Reforms Act, 1961, the amendment to the plaint was sought in about the year 1967. It was thus open to the defendants to have taken a plea that the suit was hared either under the Hyderabad Tenancy Act or under the Karnataka Land Reforms Act, 1961. But the defendants have not taken such plea. He further contended that substantial change was brought to the Land Reforms Act in the year 1974 by Act No. I of 1974 and that was given effect to from 1-3-1974. The amendment to certain sections enabled the persons claiming to be in possession of agricultural lands as tenants to file their applications in Form No. 7 for registrationof their occupancy rights. In fact time was extended by amending Section 48-A though at the first instance time was restricted to a particular period. If really the defendants were in possession of the land as tenants, nothing prevented them from approaching either the Trial Court or the Appellate Court wherever the matter was pending and request the Court to non-suit the plaintiffs. The defendants having not done so nor having taken the plea of tenancy at any time cannot now be permitted to urge and plead that they are in possession as tenants and as such the Civil Court had no jurisdiction to entertain and proceed with the suit. In support of his arguments, he relied on certain decisions some of which I advert it to at a later stage.

8. Before adverting to consider the rival contentions, it would be appropriate to refer to certain averments in the plaint and the written statement for the reason that the learned Counsel for the revision petitioners vehemently contended that the averments in the plaint themselves were sufficient to bar the jurisdiction of the Court. I read the pleadings made available to me at the hearing. A reading of the whole of the plaint does not make out that the plaintiffs based the suit on the question of tenancy, their case is that as their elders were incapable of satisfying the decree, they parted with the possession of the land and put the defendants 2

to 4 in possession of the property with a clear understanding that they should appropriate the income from the agriculture in a period of 20 years and thereafter they should redeliver the property. It is nowhere stated in the plaint that the lands were tenanted. It is only in the rejoinder it is stated that defendants 2 to 4 were put in possession of the said lands under lease and licence to cultivate the same for 20 years in 1940 in lieu of the balance of the decretal amount. The word 'lease' was emphasized by the learned Counsel and argued that it could be construed as lease of the land to a tenant. But on reading the whole of the plaint and rejoinder, one cannot read into it the creation of tenancy in favour of the defendants. A portion of the sentence, cannot be read in isolation and say that there was lease of lands. The whole sentence reads what the parties intended. Sri Appa Rao, learned Counsel submitted that it may be a mistake and it should be read as 'leave and licence'. Significantly enough the defendants also do not plead that they entered on the land as tenants. It is also significant to note that defendants have not at any point of time given the necessary particulars of the tenancy. Section 6 of the Hyderabad Tenancy and Agricultural Lands Act, 1950, prohibited lease of lands three years after the Act came into force. The pleadings admit of no doubt that the defendants 2 to 4 came in possession of the land in about the year 1940 either by force or otherwise and khatha was changed in the year 1954-55. But no particulars as to when the tenancy was created are forthcoming. Plaintiffs could not have also created any tenancy after three years after the Act came into force. Defendants 2 to 4 do not say when they took the land on lease or when they leased the land to the first defendant or others. On the other hand, their definite plea as we can see from para 1 in 'further pleas' of the written statement is that they took the land by force. It reads thus:--

'1. The plaintiffs have no locus standi to institute this suit. They are neither the owners nor the possessors of the suit schedule lands. On the contrary it is submitted that the defendants 2 to 4 are the true lands-holders and the owners thereof. It was on the day of 'Ugad' 1346 Fazli corresponding to the English year 19 the said defendants had forcibly occupied the suit land by dispossessing the previous owners namely Papayya and Antaiah. Since then the defendants are openly and continuously in possession of the lands denying the title of the plaintiffs and their so-called ancestors and asserting the title of their own. As such the said

defendants have become the owners of the lands by virtue of adverse possession.

..... Apart from that the late Antaiah had also admitted theproprietary right of the defendants in respect of the suit lands.

It is further submitted that recently the defendants 2 to 4 have also entered into agreements to sell the suit lands to the defendant 1 and some other persons, and have put the intending purchasers in possession of the lands in part performance of the contract for sale. Since the date of the agreements defendant 1 and other vendees are in actual possession of the lands in pursuance of the contract after making the payment of the consideration in full to the defendants 2 to 4. Proceedings for permission to alienate the lands are pending disposal before the competent authorities'.

It is thus clear from the pleading that at no point of time either during the pendency of the suit or during the pendency of the appeal, the parties raised the question of tenancy nor there was any indication by any of the parties that the lands were tenanted lands.

9. Sri N.S. Prasad, learned Counsel for the revision petitioners contended that the jurisdiction of the Court is always determined on the basis of the allegations made in the plaint and as such whatever the defence may be that can never be considered in determining the jurisdiction of the Court. In support of his arguments he relied on the decision of the Supreme Court in Abdulla Bin Ali and Others v Galappa and Others. It is true that the jurisdiction of the Court necessarily determined on the allegations made in the plaint. I have made it clear that the averments in the plaint do not even indicate in the least the existence of relationship of landlord and tenant either between the elders of the plaintiffs and the defendants or between the plaintiffs and the defendants at any time prior to the suit. Even the defence urged and projected is not that the defendants were in possession of the land as tenants. In fact in Regular First Appeal, this Court has considered the plea of defendants and rejected their plea that they have established their title to the property by law of adverse possession. When plaint allegations do not in the least bar the jurisdiction of the Court, incidentally the defence may be considered when an argument was advancedregarding lack of

jurisdiction by the defendants. But in the instant case, the defendants have also not taken the plea of tenancy either during the trial of the suit or hearing of the appeal. The plaintiffs' case is that permissive possession was given with an understanding that they should redeliver after 20 years but they did not redeliver. Hence the suit was filed.

The Supreme Court in Abdulla Bin Ali's case, supra, has clearly said that a suit against the trespasser would lie only in the Civil Court and not in the Revenue Court. The relevant observation reads thus:--

'5. There is no denying the fact that the allegations made in the plaint decide the forum. The jurisdiction does not depend upon the defence taken by the defendants in the written statement. On a reading of the plaint as a whole it is evident that the plaintiffs-appellants had filed the suit giving rise to the present appeal treating the defendants as trespassers as they denied the title of the plaintiffs-appellants. Now a suit against the trespasser would lie only in the Civil Court and not in the Revenue Court. The High Court, however, took the view that the plaintiffs-appellants had not claimed a declaration of title over the disputed plots and all that has been set up by them in the plaint is the relationship of landlord and tenant.

6. In our opinion the High Court was not quite correct in observing that the suit was filed by the plaintiffs-appellants on the basis of relationship of landlord and tenant. Indeed, when the defendants denied the title of the plaintiffs and the tenancy the plaintiffs filed the present suit treating them to be trespassers and the suit is not on the basis of the relationship of landlord and tenant between the parties. It is no doubt true that the plaintiffs had alleged that the defendant 2 was a tenant but on the denial of the tenancy and the title of the plaintiffs-appellants they filed a suit treating the defendant to be a trespasser and a suit against a trespasser would lie only in the Civil Court and not in the Revenue Court'.

(emphasis supplied)

In the instant case, the suit is not filed on the basis of relationship of landlord and tenant, in respect of agricultural lands. Therefore, the averments in the plaint as argued by the learned Counsel did not bar the jurisdiction of the Civil Court.

10. He then contended that the suit for correction in the Record of Rights was not maintainable in view of certain provisions contained in the manual of the Record of Rights of the then Government of Hyderabad. The suit at the first instance was filed for rectification and for instructions to the Deputy Commissioner to continue the name of the plaintiffs as owners. Neither the Government nor the officers of the Government were made parties. During the pendency of the suit, amendment was moved and the plaintiffs sought for declaration of their title and for possession of the property. Section 14 of the Manual of the Record of Rights prohibited the suit by an individual against the Government or any officer of Government in respect of a claim to have an entry made in any record or register maintained under the Regulation or to have any such entry omitted or amended, it did not prohibit a suit against individuals. In the instance case, neither the Government nor the officers of the Government made parties and by amendment that relief was given up and they asked for relief of declaration of title and possession. Therefore, in the circumstances, I find no merit in the arguments and on that ground the order impugned cannot be faulted.

11. The other argument advanced is that in view of Sections 32 and 99 of the Hyderabad Tenancy and Agricultural Lands Act, the Civil Court could not have gone into the question and settled the dispute between the parties. The learned Counsel also argued that lack of jurisdiction of a Court to pass the judgment and decree could be raised even in execution proceedings. I am for a moment do not wish to consider that aspect in detail for the reason that if the Court which passed the decree had lacked the jurisdiction, that can undoubtedly be raised in the execution proceedings. But in the instant case, the issue is totally different. The plaintiffs, as I have said earlier, did not institute the suit based on the relationship of landlord and tenant nor the plea of the plaintiffs was that the lands involved in the suit were tenanted lands. Over and above, the defendants also did not set up the plea of tenancy nor did they at any point of time contend that they were in possession of the property as tenants either under the plaintiffs or their elders. Certain portions in the written statement extracted above clearly demonstrate that the defendants did not take that plea. A reading of the judgment in O.S. No. 111 of 1963 and the judgment in R.F.A. No. 142 of 1973 clearly indicates that the defendants did not at any point of time raise the plea of tenancy. What they urged

was that the defendants 2 to 4 took possession forcibly and that thereafter agreed to sell in favour of the first defendant and others and put them in possession of the properties in part performance of the said contract. These matters are settled and concluded in Regular First Appeal. Therefore, the defendants cannot now cogitate the matter and say that the Civil Court had lacked jurisdiction to entertain the suit. The learned Counsel relied on several decisions, but suffice it to refer to an observation of the Supreme Court in Mathura Prasad Sarjoo Jaiswal and Others v Dossibai N.B.. Jeejeebhoy. The relevant observation is at para 10 which reads thus:--

'10. It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be re-opened. A mixed question of law and fact determined in the earlier, proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question law, i.e., the interpretation of a statute, it will be resjudicata in a subsequent proceeding between the same parties where the cause of action is the same, tor the expression ''the matter in issue' in Section 11, Code of Civil Procedure, means the right litigated between the parties, i.e., the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of the order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land'.

(emphasis supplied)

The case of the plaintiffs that they put the defendants in permissive possession and the defence of the defendants that they took forcible possession have been considered by both the Trial Court and Appellate Court and thus the dispute on

question of fact is concluded. It is not now open to the defendants to raise a fresh plea that they are in possession as tenants and this cannot be gone into in the execution proceedings. In this view it may not be necessary to refer to the other decisions cited by the learned Counsel for the plaintiffs. If only the plaint demonstrated that the suit was based on the relationship of landlord and tenant or if there was anything in the written statement indicating that the defendants were in possession of the property as tenants and the lands were tenanted lands, the Civil Court could not have proceeded with the suit in view of Sections 32 and 99 of the Hyderabad Tenancy and Agricultural Lands Act. But that is not the position here, On the other hand on earlier occasions, the defendants have taken the said plea in this execution proceedings and that has been rejected.

12. The defendants made an application under Sections 132 and 133 read with Sections 44, 45 and 48-A of the Land Reforms Act, 1961 and that was dismissed on 17-4-1985. The matter was challenged in Civil Revision Petition No. 1881 of 1985, the revision was dismissed on 30-6-1989. While disposing of the revision, the learned Judge clearly stated that there was no material indicating that any matter concerning the relationship of landlord and tenant between the parties was pending before any Tribunal as on that date. The relevant observation reads thus:--

'. . . . However, the learned Counsel for the petitioners very vehemently contended that they have filed an application as stated in para 2 of the order and sought for occupancy rights in file No. LRY/TMC/94 of 1974-75. We do not know whether that petition is pending or at what stage the matter is pending. No material is made available by the learned Counsel for the petitioner or the parties before the Executing Court. On the other hand, there is positive material showing that no such application is pending for consideration before the Executing Court. In that view of the matter, no purpose will be served by directing the stay of the execution until disposal of the proceedings before the authorities. How ever, the learned Counsel for the petitioners contended that the decree itself is null and void in view of the fact that when that decree was passed certain proceedings were pending before the. Land Tribunal. But it is dear that all those applications have been rejected. Merely because unsubstantiated tenancy claim is raised, the decree

passed in the suit does not become null and void. The adjudication has been done by the concerned authorities and they have found that they have no materials absolutely to entertain the claim of tenancy. In that view of the matter, there is no merit in this petition and consequently it is dismissed'.

13. The defendants subsequently made an application under similar provisions and the Trial Court rejected in revision C.R.P. No. 520 of 1991. The learned Single Judge clearly stated that there are no reasons to interfere with the order. However, it gave an opportunity to substantiate their plea on the basis of the submission made that there are some stray references in the record which support their plea of tenancy. I have read the papers and all the other papers made available to me at the hearing by both the learned Counsel carefully and I hardly find any grounds to say that at any point of time the defendants have raised the plea of tenancy. No other material is placed to substantiate their plea of tenancy. Therefore, the order impugned in this revision cannot be faulted either on the ground of illegality or on the ground of irregularity.

14. I also find certain merit in the arguments advanced on behalf of the learned Counsel for the respondents that at no point of time the judgment-debtors-revision petitioners have availed the opportunity and approached the Tribunal for appropriate relief in which event the plaintiffs would have been non-suited. Learned Counsel Sri N.S. Prasad inviting my attention to W.P. No. 15760 of 1990 argued that he approached this Court for a direction to the Land Tribunal, Chittapur to provide him certain certified copies of certain proceedings. This writ petition came to be disposed of by a learned Single Judge on 27-7-1990 holding that the petitioner could as well obtain the certified copies. The first defendant aggrieved by the said order, challenged it in Writ Appeal No. 1810 of 1990 and this appeal with a direction that certified copies be issued at the earliest was allowed on 9-10-1990. Copies were made available to me at the hearing for perusal. A perusal of the writ petition would not indicate that the defendants raised the plea of tenancy. Their grievance was that in view of the rejection of their application for summoning the records, they should be given the copies. Even assuming for a moment that there was an application by any one of the judgment-debtors before the Land Tribunal, nothing prevented the judgment-debtors to approach the Land

Tribunal, Chittapur and obtain the copies after 9-10-1990 and produce them before the Executing Court before the disposal of their second application which was disposed of on 23-10-1991 and which order was challenged in C.R.P. No. 510 of 1991. There is no material whatsoever worth the name on record to indicate that in October 1990 they approached the Land Tribunal, Chittapur and made an attempt to secure the certified copies of those proceedings. On the other hand, SriAppa Rao, learned Counsel for the respondents made available a copy of the application in Form No. 7 which reveals that an application was filed by one Ananth Reddy and Moban Reddy on 31-12-1974 as against these revision petitioners claiming to be the tenants in respect of four items of the suit land. Further it discloses that on 18-10-1985, the application was rejected. The applicants claim to be the tenants under those persons. Plaintiffs' case is that the defendants were put in permissive possession and that has been denied by the defendants, the defendants' case is that they took forcible possession. But nowhere is there an indication that they entered upon the land as tenants. There is absolutely no material indicating that the judgment-debtors at least in the year 1974 or thereafter made any application in Form No. 7 before the Land Tribunal for registration of their occupancy rights. The learned Counsel for the respondents contended that so long as there was no application either during the pendency of the suit or during the pendency of the appeal, it cannot be said that the defendants' plea of alleged tenancy is substantiated. I find considerable merit in this argument.

14-A. Further Sri Appa Rao, learned Counsel contended that if the Court which passed the decree lacked the jurisdiction, objection to its validity may be raised in an execution proceedings, if the objection appears on the face of the record and not otherwise. In support of his arguments, he relied on the decision of the Supreme Court in Vasudev Dhanjibhai Modi v Rajabhai Abdul Rehman and Others . The Apex Court has declared that where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had jurisdiction or not to entertain and try the suit, the objection cannot be raised in the execution proceedings. The relevant portion reads thus:

'7..... Again, when the decree is made by a Court which hasno inherent jurisdiction to make it, objection as to its validity may he raised in an execution proceeding if the objection appears on the face of the record, where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the Executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction. ....

8. ..... Where it is necessary to investigate facts in order todetermine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding.

9. The High Court was of the view that where there is lack of inherent jurisdiction in the Court which passed the decree, the Executing Court must refuse to execute it on the ground that the decree is a nullity. But, in our judgment, for the purpose of determining whether the Court which passed the decree had jurisdictionto try the suit, it is necessary to determine facts on the decision of which the question depends, and the objection does not appear on the face of the record, the Executing Court cannot enter upon an enquiry into those facts. In the view of the High Court since the land leased was at the date of the lease used for agricultural purposes and that it so appeared on investigation of the terms of the lease and other relevant evidence, it was open to the Court to hold that the decree was without jurisdiction and on that account a nullity. The view taken by the High Court, in our judgment, cannot be sustained'.

(emphasis supplied)

In the instant case, whether or not the Civil Court had the jurisdiction to entertain the suit depended, on the fact whether there existed the relationship of landlord and tenant and whether the lands were tenanted lands. The plaintiffs did not aver that there was relationship of landlord and tenant and the lands were tenanted lands nor did the defendants raised that plea. In these circumstances, the judgment-debtors cannot now be permitted to raise that question in execution proceedings, more importantly when they had more than one opportunity to raise

and did not do so.

15. Before concluding I would like to add that this litigation is pending over 36 years and as rightly pointed out by the learned Trial Judge in the order impugned, successive applications are being made by the judgment-debtors perhaps on the same ground only with a view to protract the litigation. The Executing Court was, therefore, right in imposing the cost also. In the circumstances, there is need to direct the Trial Court to dispose of the matter in accordance with law, as expeditiously as possible.

16. In the result and for the reasons hereinabove stated, I do not find any grounds to interfere with the order impugned. Consequently, this revision is dismissed with costs.

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