

Prabhulingam Vs. Y. Ramiah and ors.

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Court : Andhra Pradesh

Decided On : Jul-22-1997

Reported in : 1997(4)ALT376

Judge : R. Bayapu Reddy, J.

Acts : Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 - Sections 38E and 99

Appeal No. : Civil Revision Petition No. 5179 of 1994

Appellant : Prabhulingam

Respondent : Y. Ramiah and ors.

Advocate for Def. : J. Siddaiah, Adv.

Advocate for Pet/Ap. : O. Manohar Reddy, Adv.

Disposition : Petition allowed

Judgement :

R. Bayapu Reddy, J.

1. This revision is filed by the appellant before the Joint Collector, Ranga Reddy District in case No. B4/12083/90 questioning the orders dt. 8-11-1994 by which the claim of the petitioner for the disputed land was rejected and the claim of the

respondents for ownership rights Under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the Tenancy Act') was upheld confirming the orders of the Additional Revenue Divisional Officer in Case No. 1RW 327/75 dated 21-6-1975.

2. The respondents, who are the legal representatives of one Y. Yellaiah, claimed before the Additional Revenue Divisional Officer for issuance of ownership certificate Under Section 38-E of the Tenancy Act in their favour relating to the land in Sy. No. 1 of Sulthanpally village claiming as protected tenants relating to the said land. Their contention is that their father Yellaiah was a protected tenant relating to the said land; that the original owner of the land was one Syed Shabuddin Hussain; that their father had purchased the said land along with some other lands from the said original owner under a registered sale deed dated 25-8-1970 and acquired the ownership rights in that land; that after the death of their father, they alone are in possession and enjoyment of the said land and are entitled for issuance of ownership certificate Under Section 38-E of the Tenancy Act. The present petitioner, who is the son of the deceased Sivalingam, filed objection petition claiming ownership rights for the eastern half of Sy. No. 1, the total extent of which is Ac.7-13 Gts., contending that there was a litigation between the father of the respondents and the original pattadar of the land Syed Shabuddin Hussain relating to the above said land; that his father had provided the required finance to the father of the respondents in prosecuting the said litigation; that in view of such assistance rendered by him, the father of the respondents agreed to sell the said land to his father; that after the father of the respondents succeeded in the litigation, disputes arose between his father and the father of the respondents; that in order to settle such dispute, a mediation was held by some elders and in that mediation, which was held in 1956, the father of the respondents agreed to give the eastern half of the disputed land to his father and he was also put in possession of the said land in pursuance of such mediation by the elders; that ever since 1956, his father and after his death, he alone are in exclusive possession and enjoyment of the eastern half of the land in Sy. No. 1 in their own right; that he has also perfected his title to the said land by adverse possession and that the respondents are not entitled for the ownership certificate relating to the said land. He further contended before the Additional Revenue Divisional

Officer that the respondents herein had filed a civil suit in O.S.10/71 on the file of the Muhsif Magistrate, Hyderabad West, seeking the relief of recovery of possession of the said land in Sy. No. 1 against him and the said suit was still pending before the said Civil Court and that, therefore, the question of issuing the ownership certificate to the respondents does not arise.

3. On the basis of the material placed before him, the Additional Revenue-Divisional Officer, Hyderabad West by orders dated 21-6-1975 rejected the claim of the petitioner for the disputed land and directed issue of ownership certificate relating to the entire extent in Sy. No. 1 in favour of the respondents holding that the respondents are the protected tenants in the land and that the petitioner is not the owner of any portion of the land in Sy.No. 1. Questioning such orders, the petitioner herein filed appeal before the Joint Collector, R.R. District, who dismissed the said appeal by orders dated 15-4-1980 in Case No. B4/16633/75, confirming the orders of the Additional Revenue Divisional Officer having come to the same conclusion that the petitioner is not the owner of any portion of Sy. No. 1 and that the respondents, who are the protected tenants, alone are entitled for issuance of ownership certificate. When the appeal was pending before the Joint Collector, R.R. District, the suit O.S.10/71 was decreed by the trial Court on 29-9-1976. The petitioner herein, thereupon, filed appeal in A.S. No.253/76 and the said appeal was allowed on 18-10-1978 by the Additional Chief Judge, City Civil Court, Hyderabad, thereby dismissing the suit filed by the respondents. The Joint Collector observed in his Judgment that the Judgment in the civil suit is not a bar for proceeding under the Tenancy Act and granting the ownership certificate under 38-E of the Tenancy Act. Questioning the said orders of the Joint Collector, the petitioner herein filed C.R.P. No. 5700/80 in this Court. The respondents had, in the meanwhile, filed Second Appeal in S.A. No.212/80 before the High Court questioning the Judgment of the Additional Chief Judge, City Civil Court, Hyderabad passed in A.S.253/76. This Court dismissed S.A.212/80 on 6-4-1987 thereby confirming the decree and Judgment of the appellate Court in A.S. No. 253/76. On the same day, this Court allowed C.R.P. No. 5700/80 in view of the Judgment in S.A.212/80 which confirmed the judgment of the appellate Court in A.S.253/76 and the matter was remanded to the Joint Collector, R.R. District for fresh disposal according to law in view of the judgment in S.A.212/80 which

confirmed the judgment in A.S.253/76.

4. After the remand, the Joint Collector once again heard both sides and passed the impugned orders dated 8-11-1994 in Case No. B4/12083/90 and dismissed the appeal thereby reiterating the same orders which were earlier passed by his predecessor on 15-4-1980. It was held by the Joint Collector in the impugned orders that in view of the provisions of Section 99 of the Tenancy Act, the Civil Court has no jurisdiction to decide the matter relating to the disputed land; that the father of the respondents was a protected tenant and after his death, the respondents stepped into his shoes and are to be considered as protected tenants and that, therefore, they are entitled for issuance of ownership certificate and the petitioner has no rights whatsoever in the disputed land. Questioning the said orders of the Joint Collector, the present revision is filed.

5. Heard both the Counsel.

6. The contention of the respondents, who claimed for issuance of ownership certificate for the entire land in Sy. No. 1 which is of an extent of Ac.7.13 Gts., is that their father Yellaiah was the protected tenant under one Syed Shabuddin Hussain who was the Jagirdar; that during the life time of their father, he had also purchased the entire land in Sy. No. 1 along with some other lands from Syed Shabuddin Hussain under a registered sale deed dated 28-5-1970 and that in view of such circumstances, their father Yellaiah became entitled to claim the right of ownership in his capacity as a protected tenant and also under the sale deed obtained from the original owner of the land; that after the death of their father they stepped into his shoes and as his legal representatives, they are entitled for issuance of ownership certificate Under Section 38-E of the Tenancy Act. On the other hand, the contention of the petitioner is that in view of a mediation effected by some elders in the year 1956 when disputes arose between his father and the father of the respondents, the father of the respondents gave the eastern half of Sy. No. 1 to his father Sivalingam and put him in possession of the said land; that ever since then his father alone was enjoying the land during his life time and that after his death he continues to be in possession and enjoyment of the same in his own right; that he has also perfected his title by adverse possession to the said

land and that, therefore, the respondents cannot claim any ownership certificate relating to the eastern half of Sy. No. 1. It is now an admitted fact and is also proved by the material on record that the respondents herein filed O.S.10/71 on the file of Munsif Magistrate, Hyderabad West against the present petitioner seeking the relief of recovery of possession of the disputed land, which is the eastern half of the land in Sy. No. 1, contending that they are the owners of the said land as it was purchased by their father from one Syed Shabuddin Hussain who was the original owner of that land and that in view of such purchase made under a registered sale deed dated 28-5-1970 his father became the owner of the said land and after his death they became entitled to the same; that they were also in possession and enjoyment of the said land; that in the year 1970 the petitioner tried to interfere with their possession and enjoyment of the said land and as such, the said suit was filed for the relief of permanent injunction; that during the pendency of the suit the petitioner trespassed into the said land in about September, 1973 and as such the plaint was amended for the relief of recovery of possession from the petitioner and the said suit was contested by the petitioner herein. He had specifically raised a plea in the suit that the father of the respondents gave the eastern half of the land in Sy. No. 1 which was the subject matter of the suit to his father in the year 1956 and put him in possession of the same; that ever since then his father alone was enjoying the said land; that after his death, the petitioner has been in possession and enjoyment of the said land in his own right and that he had also perfected his title to the said land by adverse possession. The trial Court decreed the said suit on 29-9-1976 holding that the respondents herein are the owners of the land and that the petitioner failed to establish his title to the disputed land either under the alleged mediation or by way of acquisition of title by adverse possession. It is also now admitted that the petitioner herein filed A.S.253/76 before the Additional Chief Judge, City Civil Court, Hyderabad questioning the decree and judgment of the trial Court and the said appeal was allowed on 18-10-1978 thereby dismissing the suit filed by the respondents. The learned Additional Chief Judge, City Civil Court, Hyderabad framed five specific points for consideration in the appeal which are as follows:-

' (1) Whether the plaintiffs acquired valid title to the suit land in the manner alleged by them?

(2) Whether the defendant obtained possession of the suit land in the manner alleged by them?

(3) Whether the defendant perfected his title to the suit land by adverse possession?

(4) Whether the plaintiffs are entitled to recover possession of the suit land from the defendant?

(5) To what relief?'

Under Point No. 1 he came to the specific conclusion that the plaintiffs in the suit who are the respondents herein did not acquire valid title to Sy. No. 1 in the manner alleged by them by purchasing the said land under the registered sale deed dated 28-5-1970 from Syed Shabuddin Hussain. Under Point No. 2 he came to the conclusion that the mediation pleaded by the present petitioner, who was the defendant in the suit, and delivery of possession of the eastern half of the land in Sy. No. 1 to his father in the year 1956 are true and that the father of the petitioner came into possession of that land under such mediation in the year 1956. Under Point No. 3, which relates to the plea of adverse possession set up by the petitioner herein, the learned Additional Chief Judge, City Civil Court, Hyderabad came to the clear conclusion on the basis of the evidence adduced before him, that the petitioner who was the defendant in the suit and his predecessors have been in exclusive possession and enjoyment of the eastern half of Sy. No. 1 in their own right and as such, the petitioner perfected his title to the said land by adverse possession. It is also now an admitted fact that the respondents herein, thereupon, filed a second appeal in this Court in S.A. No.212/80, which was, however, dismissed by this Court on 6-4-1987 and that the said judgment which confirmed the judgment in A.S.253/76 has admittedly become final. The respondents, who are the plaintiffs, in the suit O.S.10/71, are therefore, clearly bound by the above said Judgment rendered and the findings given by the appellate Court as well as this Court in the above said civil proceedings. As already stated above, in view of such findings of the Civil Court, the title of the petitioner for the disputed land by adverse possession is upheld and as such, the respondents cannot claim any rights in that land, which is the eastern

half of the land in S. No.1, which was the subject matter in O.S.10/71 and which alone is now in dispute in the present proceedings also. Therefore, in view of such circumstances, the lower authorities have clearly erred in rejecting the claim of the petitioner for the eastern half of the land in Sy. No. 1 and in directing issuance of ownership certificate Under Section 38-E of the Tenancy Act in favour of the respondents for that eastern half of the land in Sy. No. 1 also.

7. The learned Counsel for the respondents, however, tries to contend that inasmuch as the respondents are the protected tenants of the disputed land, they are entitled for issuance of ownership certificate Under Section 38-E of the Act irrespective of the fact whether they were in possession of that land or out of such possession; that the plea of adverse possession is not open to be raised by the petitioner in view of the relevant provisions of the Tenancy Act; that the Civil Court has also no jurisdiction to go into the matter and decide the rights of the parties in view of the provisions of Section 99 of the Tenancy Act and as such, the decisions rendered by the Civil Court in the above said proceedings cannot be of any assistance to the petitioner and that, therefore, the orders of the Joint Collector have to be confirmed. As already stated above, this Court allowed C.R.P. No.5700/ 80 on 6-4-1987 and remanded the matter to the Joint Collector for fresh disposal according to law in view of the Judgment in S.A. No.212/80 which confirmed the judgment of the first appellate Court in A.S.253/76. But the Joint Collector passed the impugned orders dated 8-11-1994 specifically observing that the Civil Court has no jurisdiction in view of the provisions of Section 99 of the Tenancy Act and that the claim of the petitioner for the disputed land on the basis of adverse possession cannot be sustained. The learned Counsel for the respondents has also tried to rely upon the Full Bench decision of this Court reported in *Sada v. Tehsildar, Utnoor*, : AIR 1988 AP77 (F.B.). in support of his contention in this regard. But a perusal of the said judgment of this Court, however, shows that it is not of any assistance for the contention of the respondents herein. It is to be seen in this case that the respondents have put forward their claim for the suit land on two grounds. The first ground is that their father Yellaiah was the protected tenant under one Syed Shabuddin Hussain who was the original owner of the land; that after the death of their father, they stepped into his shoes and became the protected tenants and that, therefore, they are

entitled for issuance of the ownership certificate Under Section 38-E of the Act relating to the land in Sy. No. 1. There was also a dispute between the father of the respondents and Syed Shabuddin Hussain, who was the Jagirdar of the land, and such dispute was decided by the Additional Collector, Hyderabad District by the orders dated 11-1-1954 holding that the father of the respondents was put in possession of the land in Sy. No. 1 and some other lands as tenant by the Jagirdar and he was in such continuous possession and enjoyment for more than 20 years; that the Jagirdar never cultivated that land during the period and as such, patta for the said land cannot be granted in favour of the Jagirdar and such patta should be assigned in the name of the father of the respondents. The original Jagirdar thereupon filed appeal before the Board of Revenue, which by its judgment dated 17-9-1956 dismissed the said appeal thereby confirming the orders of the additional Collector recognising the rights of the father of the respondents for the land in Sy. No. 1. The respondents, however, subsequently came forward with the specific contention in O.S. No. 10/71 that they became the owners of the land in Sy. No. 1 by purchasing the same from Syed Shabuddin Hussain under the registered sale deed dated 28-5-1970. It is, therefore, clear that the respondents are claiming ownership to the land in Sy. No. 1 by putting forward conflicting versions to the effect (1) that they are entitled for issuance of ownership certificate Under Section 38-E as they are the protected tenants under the Act, and (2) that they purchased the said land under a registered sale deed said to have been executed by the original Jagirdar on 28-5-1970. In any case, it is the specific contention of the petitioner right from the beginning that his father Sivalingam had financed the litigation on behalf of the father of the respondents in the proceedings under the Tenancy Act in which the father of the respondents finally succeeded in view of the orders of the Board of Revenue dated 17-9-1956; that on account of such financial assistance rendered by him, the father of the respondents agreed to sell the land in Sy. No. 1 to his father; that when disputes arose between them, there was a mediation by elders and in such mediation held in 1956 the father of the respondents gave the eastern half of the land in Sy. No. 1 to the father of the petitioner and put him in possession of the said land in the year 1956 and that ever since 1956 his father, and after his death, he alone is in exclusive possession and enjoyment of that land in his own right and that, therefore, he has perfected

his title to the said land by adverse possession. Therefore, it is clear that the plea of adverse possession in the present case is put forward by a third person who is not a party to the tenancy proceedings. He is neither tenant nor the original land owner between whom alone the disputes can be decided under the provisions of the Tenancy Act. He is not claiming the right of ownership as original land holder, nor is he claiming any protected tenancy rights in the disputed land. Therefore, the provisions of the Tenancy Act cannot be made applicable to the present case, where the dispute is between the alleged protected tenants and a third party.

8. Section 38-E of the Tenancy Act contemplates issuance of ownership certificate in favour of the protected tenants. The respondents are claiming issuance of such ownership certificate Under Section 38-E in the present case relating to the disputed land. The petitioner herein is a third party claiming title to the disputed land by adverse possession, as already stated above. Section 99 of the Tenancy Act which bars the jurisdiction of Civil Courts is as follows:-

'99. Bar of jurisdiction:- (1) Save as provided in this Act no Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Tahsildar, Tribunal or Collector or by the Board of Revenue or Government.

(2) No order of the Tahsildar, Tribunal or Collector or of the Board of Revenue or Government made under this Act, shall be questioned in any Civil or Criminal Court.'

The dispute in the present case, as already stated above, is between the persons who are claiming ownership rights as protected tenants and a person who is a third party claiming rights to the same land by adverse possession. Such disputes cannot be settled, decided or dealt with by the concerned tribunals under any provisions of this Act as it is not a dispute between a person claiming rights as protected tenant and the original owner of the land. In the Full Bench decision of this Court reported in *Sada v. Tehsildar, Utnoor* (1 supra), on which the learned Counsel for the respondents tries to rely upon., the main points that arose for consideration are, whether the protected tenant who was out of possession on the notified date can claim ownership certificate under the provisions of Section 38-E

and whether the land holder can plead and prove adverse possession before the statutory Tribunals under the Act as against a protected tenant who was out of possession. It was observed by their Lordships that even if the protected tenant was not in actual possession of the land on the date of the notification issued Under Section 38-E, he can as well claim ownership certificate under the said provisions of the Act. It was also further held that the plea of adverse possession cannot be raised against such a protected tenant by the land holder. It is clear from a perusal of the said decision that the dispute in that case was only between the original land holder and the protected tenant of such land holder. When the dispute is only between such protected tenant and the land holder, the plea of adverse possession cannot be raised by such land holder and the claim of the protected tenant for issuance of ownership certificate Under Section 38-E of the Act can be accepted even if he was out of possession by the date of issuance of the relevant notification. In the present case, as already stated above, the dispute is only between the respondents who are claiming rights in the disputed land in their capacity as protected tenants, and also under a registered sale deed said to have been executed in their favour by the original land holder on the one hand, and the petitioner who is a third party claiming title to the disputed land by way of adverse possession on the other hand. The petitioner is specifically disputing the title of the respondents for the eastern half of the Sy. No. 1 and claiming title to the said land on the basis of acquisition of such title by adverse possession. Inasmuch as such dispute between them cannot be settled, decided or dealt with by any of the Tribunals under the Act, the jurisdiction of the Civil Courts to decide such disputes is not taken away by Section 99 of the Tenancy Act and such disputes, which are of civil nature, can be decided only by the regular Civil Courts.

9. In the Division Bench decision of this Court reported in Venkataramayya v. Guruviah, 1961 (1) An.W.R. 120. it is observed by this Court, while dealing with the provisions of the same Tenancy Act, as follows:-

'The scheme of the Act is to regulate the relationship between the landholders and tenants and it does not affect the rights inter se between the parties setting up rights of ownership to a particular land or a dispute between a owner and a trespasser or a person other than a tenant.'

It is further observed by their Lordships at Page 122 as follows:-

'We may in this connection like to mention that where a Special Tribunal is created by an Act for purposes of determining as to the rights which are creations of the Act, then the jurisdiction of that Tribunal is exclusive unless provided otherwise and the Civil Courts cannot take cognizance of such matter. But where the subject matter of the suit falls outside the exclusive jurisdiction of the Special Tribunal, the jurisdiction of the Civil Court always remains, provided the suit is of a civil nature.'

In another earlier Division Bench decision of this Court reported in Hanmanth Reddy v. K. Nagamma 1983 (1) ALT 199=1983 (1) APLJ 148 at 152 also it is observed at Page 152 as follows:-

'It is well settled that where a Special Tribunal is created by an Act of Legislature for the purpose of determining the rights created by the statute and finality is given to the orders of the Tribunal, the jurisdiction of a Civil Court must be considered to be excluded with regard to those matters. But, where the relief sought in a suit is one which the Special Tribunal is incapable of granting, the jurisdiction of the Civil Court is not ousted merely because the question which has to be incidentally decided is a question within the competence of a Special Tribunal.'

It is, therefore, clear that in the present case also the dispute between the petitioner and the respondents who were setting up rival claims relating to the title of the disputed land cannot be settled, decided or dealt with by any of the Tribunals under any provisions of the Tenancy Act and that inasmuch as such dispute is of civil nature, it can be decided only by a Civil Court. Therefore, the contention of the learned Counsel for the respondents that the Civil Court has no jurisdiction to decide the dispute between the parties and that the plea of adverse possession is not open to the petitioner, cannot be accepted. In the present case, the same dispute which is of civil nature arose between the same parties in the prior civil suit and the rights of the respondents for the eastern half of the land in Sy. No. 1 were negatived and acquisition of title by adverse possession by the petitioner was specifically upheld in that civil litigation between the parties. Such findings of the Civil Court, which have become final, are binding upon them and as such the respondents cannot be granted any ownership certificate Under Section

38-E of the Tenancy Act relating to the eastern half of the land in Sy. No.1, which alone is in dispute in the present proceedings.

10. In the result, the revision petition is allowed but without costs and the impugned orders of the lower authority are set aside thereby negating the claim of the respondents for issue of ownership certificate relating to the eastern half of the land in Sy. No. 1 and upholding the claim of the petitioner for the said land.

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