

M. Bagi Reddy and Another Vs. T. Krishna Reddy and Others

M. Bagi Reddy and Another Vs. T. Krishna Reddy and Others

SooperKanoon Citation : sooperkanoon.com/438049

Court : Andhra Pradesh

Decided On : Apr-26-2000

Reported in : 2000(4)ALD360; 2000(4)ALT235

Judge : C.V.N. Sastri, J.

Acts : [Specific Relief Act, 1963](#) - Sections 38; Andhra Pradesh (TA) Tenance and Agricultural Lands Act, 1950 - Sections 38-E(2) and 99; Andhra Pradesh (Telangana Area) Inams Abolition Act, 1955; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100(5) - Order 41, Rule 27

Appeal No. : SA No. 1032 of 1998 and CRP No. 2763 of 1995

Appellant : M. Bagi Reddy and Another

Respondent : T. Krishna Reddy and Others

Advocate for Def. : Mr. V. Tulasi Reddy, Adv.

Advocate for Pet/Ap. : Mr. P.M. Gopal Rao, Adv.

Judgement :

1. This second appeal and civil revision petition are being disposed of by a common judgment as they relate to the self-same property and the parties are common.

2. The civil revision petition is directed against the Order dated 19-6-1995 passed by the Joint Collector, Ranga Reddy District dismissing the appeal filed by the petitioners questioning the order of the Revenue Divisional Officer, Chevelladated 14-9-1988 by which the RDO issued a revised ownership certificate under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 in favour of the respondents in respect of the subject land. It may be mentioned that though the said certificate comprises several survey numbers, the dispute in the present proceedings relates to only an extent of 30 guntas out of a total extent of Ac.9-28 guntas in survey number 357 of Ahval village, Matkajgiri Mandal, Ranga Reddy district.

3. The second appeal arises out of a suit filed by the petitioners in the CRP against the respondents for a permanent injunction in respect of the said extent of 30 guntas of land. The trial Court decreed the suit. But on appeal it was reversed holding that the plaintiffs were not in possession of the suit land as on the date of suit and they are also not entitled for injunction in view of the ownership certificate under Section 38-E of the said Act granted in favour of the defendants. Hence the second appeal.

4. For the sake of convenience, the parties will be referred to as plaintiffs and defendants in this judgment.

5. It is the case of the plaintiffs that the suit land is an inam land and that they and their predecessors in interest have been in occupation of the same for the last more than 50 years, that they are entitled for occupancy rights in the said land by virtue of the provisions of the Andhra Pradesh (Telangana Area) Inams Abolition Act, 1955 and that proceedings in that behalf are still pending before the competent authority. As the defendants obtained the ownership certificate under Section 38-E of the Tenancy Act behind their back, the plaintiffs have preferred an appeal before the Joint Collector who erroneously dismissed the said appeal. Hence they filed CRP No.2763 of 1995 questioning the said order of the Joint Collector. It is the further case of the plaintiffs that there is an irrigation well fitted with electric motor and pump set in the suit land, that it is also enclosed by a compound wall and fencing on either side and that the plaintiffs have been using

the said well for irrigation of their adjoining lands in survey numbers 355 and 405 since a long time.

6. On the other hand, it is the case of the defendants that they are protected tenants in respect of the total extent of Ac.9-28 guntas in Survey No.357 including the suit land, that originally a ownership certificate under Section 38-E was granted on 31-5-1975 in favour of their predecessors viz., Kothakapu Sat Reddy and others, sons of Narasaiah, that in the subsequent family partition, the said extent of Ac.9-28 guntas fell to their share and therefore, they filed an application before the Revenue Divisional Officer for issuing revised ownership certificate in their favour according to their shares and the RDO who is the competent authority, after due enquiry granted the revised ownership certificate dated 14-9-1988 in their favour which is marked as Ex.A16. The trial Court appointed an Advocate Commissioner, who after local inspection of the suit land, filed his report.

7. To prove their case, the plaintiffs besides examining the first plaintiff as PW1 mainly relied upon the pahani for the years 1955-58 marked as Ex.A2 and the pahani for the year 1989-90 marked as Ex. A10 wherein their names are evidence as the cultivators of the suit land. As against the said evidence on the side of the plaintiffs, the defendants relied upon the oral evidence of the 1st defendant who was examined as DW1 and the pahanis from 1980-83 to 1987-88 marked as Exs.B1 to B4 and the order of mutation passed by the Mandal Revenue Officer dated 18-3-1989 which was marked as Ex.B5. The trial Court relying mainly on Exs.A2, AtO and the Commissioner's report, decreed the suit in favour of the plaintiffs. The appellate Court admitted by way of additional evidence in the appeal, the ownership certificate dated 31-5-1975 under Section 38-E originally granted in favour of the predecessors in interest of the defendants and the revised ownership certificate granted in favour of the defendants and marked the same as Exs.B6 and A16 respectively in the appeal.

8. The appellate Court was of the view that the revenue records do not reflect the possession of the plaintiffs for the years 1958-59 to 1988-89, that though the plaintiffs made a representation to the Mandal Revenue Officer on 6-6-1989 (Ex.A1) for correcting the entries in the revenue records, no enquiry appears to

have been made by the MRO thereon, that Exs.A10 to A13 which are the pahani patriks relating to the years subsequent to the filing of the suit deserve no consideration and that in view of the ownership certificate under Section 38-E granted to the defendants, the plaintiffs are not entitled for injunction as against the defendants. On the said findings, the appellate Court reversed the decision of the trial Court and dismissed the suit.

9. The second appeal has been admitted on the basis of the substantial questions of law mentioned in ground Nos.2(a) and 2(b) of the Memorandum of grounds, which are as follows:

2(a) Once the ownership certificate issued pursuant to the orders dated 14-9-1988 by the Revenue Divisional Officer is suspended by this Hon'ble Court, whether the plaintiffs who are in possession of the property are entitled to injunction to protect their possession or not is a substantial question of law.

2(b) Whether the lower appellate Court justified in setting aside the judgment and decree only basing upon the ownership certificate granted under Section 38-E Certificate inspite of the same suspended by this Hon'ble Court under Ex.A14.

10. At the time of hearing Sri P.M. Gopal Rao, the learned Counsel for the Plaintiffs assailed the judgment of the Appellate Court contending that the appellate Court erred in admitting by way of additional evidence, the ownership certificate under Section 38-E which is illegal, void and non est, as the suit land is an inam land which is governed by the provisions of the Inams Abolition Act of 1955 and that in any case the appellate Court was not justified in drawing a fiction of deemed possession under Section 38-E(2) of the Tenancy Act in favour of the defendants. He also contended that the appellate Court was wholly in error in eschewing from consideration Ex.A10 on the erroneous view that it relates to the period subsequent to the filing of the suit whereas it is a contemporaneous document relating to the suit year only and as such the finding of the appellate Court with regard to possession is vitiated. He further submitted that the appellate Court failed to take into consideration the Commissioner's report which also clinchingly proves the case of the plaintiff. On the basis of his oral submissions made at the time of hearing, the learned Counsel for the plaintiffs reformulated the

substantial questions of law arising in the case, which are as follows:

(a) Whether the lower appellate Court is justified in admitting Ex.B6 dated 31-5-1975 issued under Section 38-E of Andhra Pradesh (TA) Tenancy and Agricultural Lands Act relying upon without any specific plea or issue by wrongly assuming that it is not a disputed document under Order 41, Rule 27 of CPC;

(b) Whether the granting of Ex B6 by the Tenancy Authorities is non est and void in the case of suit land which is undisputedly Inam lands and relying thereupon by the lower appellate Court is not legal which is established and proved as Inam lands under Inams Abolition Act, 1955;

(c) Whether it is lawful for the lower appellate Court justified to draw a fiction of deemed possession under Section 38(E)(2) of Tenancy Act and apply the same for the purpose of the suit; and

(d) Whether rejection of Ex.A10 which is contemporaneous revenue document for suit period as being subsequent to the suit is lawful without looking into contents of the document.

11. Sri Tulasi Reddy, the learned Counsel appearing for the defendants has contended that as the suit is a simple suit for injunction, the question whether the suit land is Inam land or not is irrelevant and the question for consideration is with regard to possession only. On the said question, the appellate Court which is the final Court of fact, on a consideration of the oral and documentary evidence on record, recorded a categorical finding that the plaintiffs have not established their possession as on the date of the suit. The said finding of fact is not amenable for interference in second appeal. He further contended that the Commissioner's report merely shows the existence of the well and some other structures in the suit land and the same will not prove the possession of the plaintiffs. He also submitted that Ex B6, which remained unchallenged, is conclusive evidence of ownership and that the civil Court has no jurisdiction to go into the Question of validity of the same in view of the bar contained in Section 99 of the Tenancy Act. He also submitted that in view of the ownership certificates granted in favour of the defendants and their predecessors in interest, no injunction can be granted by the

civil Court. He finally submitted that the Second Appeal was originally admitted in view of the substantial questions of law formulated in grounds 2(a) and 2(b) of the memorandum of grounds which are based exclusively on the order of interim suspension granted by this Court in the CRP which was marked as Ex.A14. But subsequently, the said interim order was vacated by this Court on 16-12-1999. So the basis for the second appeal has disappeared and no question of law survives. It has, however, been pointed out that by a subsequent order dated 20-12-1999 passed in CMP No.26717 of 1999 in CRP No.2763 of 1995, this Court directed status quo existing as on that date in the subject land to be maintained by both parties until further orders. It cannot, therefore, be said that the substantial questions of law on the basis of which the Second Appeal has been admitted have disappeared. Even otherwise, the proviso to sub-section (5) of Section 100 CPC makes it clear that 'nothing in the said sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question'. I am of the view that the second appeal involves the substantial questions of law, which have been reformulated by the learned Counsel for the appellant as mentioned above.

12. I shall proceed to deal with the rival contentions advanced by the learned Counsel for both parties.

13. The suit being one for permanent injunction simpliciter, I am of the view that it is not necessary to go into the question whether the suit land is an Inam land and whether the ownership certificates under Section 38-E of the Tenancy Act granted infavour of the defendants (Exs.B6 and A16) are valid and binding on the plaintiffs for the purpose of disposal of the suit. It is stated that the proceedings under the Inams Abolition Act are still pending before the competent authority under the said Act. It will, therefore, be open to both parties to agitate the above questions in the said proceedings before the authority under the Inams Abolition Act.

14. The only question which, therefore, remains to be considered is with regard to possession. The appellate Court no doubt recorded a finding that the revenue records do not reflect the possession of the plaintiffs during the relevant period

and that the defendants must be deemed to be in possession in view of the ownership certificates under Section 38-E granted in their favour. I am, however, satisfied that the said finding recorded by the appellate Court is vitiated by failure to consider material evidence available on record. Ex.A2 is the pahani for the years 1955-58. In column No 2 of Ex.A2 it is clearly stated that Survey No.357 is Kanaji guda Maktha (in Telugu) which means 'Inam land'. In column No 11, the name of the Inamdar and the sharers are mentioned. In column No.13, the name of Kothakapu Narasaiah, the predecessor of the defendants is shown as 'Akramana Daru' (in Telugu), means possessor. However, in column No.16, the names of the persons who are actually cultivating the land are mentioned. In the said column, the names of the following persons are mentioned:

1. Kothakapu Sai Reddy (predecessor of defendants)
2. Chamala Narasimha Reddy (elder brother of 2nd plaintiff)
3. Mamidi Rajia Reddy (father of first Plaintiff)

15. It is thus clear from column No.16 of Ex.A2 that the predecessors in interest of the plaintiffs were also actually in possession and cultivation of the land in Survey No.357. Ex.A10 is the pahani for the year 1989-1990. The appellate Court eschewed the same from consideration under the view that it related to the year subsequent to the filing of the suit. This assumption does not appear to be correct. Ex.A10 relates to the Fasli year 1989-90 beginning from June, 1989 and ending with May, 1990. The suit was filed on 27-12-1989. Ex.A10 relates to the suit year only. In column 2 of Ex.A10, the land in S No.357 is described a 'Gadi Bayi Patta' (in Telugu). In column No12, the names of defendants are shown as patiadars. In column No. 13, which is the possessory column, the names of plaintiffs 1 and 2 are also mentioned. In column No. 14, it is shown that the pattadars (i.e., defendants) are in possession of Ac.8-38 guntas, whereas the encroachers i.e., plaintiffs 1 and 2 are shown to be in occupation of 15 guntas and 15 guntas respectively. In columns 22 and 23 it is recorded that grass is grown in an extent of 20 guntas and the remaining extent of 10 guntas is shown to be occupied by cattle-shed and well etc. Thus Ex.A10 clearly shows that the plaintiffs are in actual possession and enjoyment of 30 guntas in survey number 357 as on the date of

the suit and the same possession continued in the subsequent years also as borne out by the subsequent pahanis which are marked as Exs.All to A13 for the years 1990-91, 1991-92 and 1992-93. The appellate Court was, therefore, not correct in holding that the revenue records do not reflect the possession of the plaintiffs during the relevant period. The Commissioner's report, which is a part of the record, also corroborates the case of the plaintiffs that there is a well, cattle-shed and other structures on the suit land. The land revenue receipts and the property tax receipts filed by the plaintiffs which are marked as Exs.A4 to A9 also lend further support to the case of the plaintiffs. The appellate Court failed to consider this clinching documentary evidence which is on record. Instead it chose to mainly rely on the ownership certificates under Section 38-E granted to the defendants under the Tenancy Act and it has drawn an inference therefrom of deemed possession of the defendants. I am inclined to agree with the submission of the learned Counsel for the plaintiffs that the fiction of deemed possession provided in Section 38-E of the Tenancy Act is available only for the limited purpose mentioned in the said section and the same cannot be extended for other purposes i.e., to prove possession, ignoring the material available on record with regard to actual possession. It is also seen from the material on record that by virtue of the interim orders granted by this Court vide Ex.A14, the plaintiffs have been continuing in possession of the suit land till date.

16. Under the circumstances, I am of the view that their possession should be protected subject to the final orders that may be ultimately passed by the competent authority under the Inams Abolition Act before whom the proceedings are said to be still pending. Accordingly, the second appeal is allowed, the judgment and decree of the lower appellate Court are set aside and the judgment and decree of the trial Court are affirmed. But there will be no order as to costs.

17. For the reasons already mentioned above, I do not find any valid grounds to interfere with the order of the Joint Collector, which is impugned in the CRP. The CRP No.2763 of 1995 is accordingly dismissed. This does not, however, preclude the petitioners in the CRP from agitating their rights before the competent authority under the Inams Abolition Act and contend that the ownership certificate as well as the revised ownership certificate granted in favour of the respondents and

their predecessors are not valid and binding on them. It will be open for the competent authority to consider the contentions of both parties and decide the said question in accordance with law. There will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com