

Petlu Prakash and anr. Vs. Petlu Penchalamma and anr.

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Court : Andhra Pradesh

Decided On : Dec-23-2003

Reported in : 2004(2)ALT535

Judge : Goda Raghuram, J.

Appeal No. : Second Appeal No. 995 of 2003

Appellant : Petlu Prakash and anr.

Respondent : Petlu Penchalamma and anr.

Advocate for Def. : S.S. Bhatt, Adv.

Advocate for Pet/Ap. : M. Radhakrishna, Adv.

Disposition : Appeal dismissed

Judgement :

Goda Raghuram, J.

1. This second appeal is directed against the judgment and decree dt. 16-8-2003 in A.S.No. 103 of 2000 on the file of the III Additional District Judge, Fast Track Court, Kadapa reversing the judgment and decree dt. 25-10-2000 in O.S.No. 635 of 1998 on the file of the IV Additional Junior Civil Judge, Kadapa.

2. The appellants herein are the plaintiffs. The suit was filed for permanent injunction. The plaintiffs pleaded that they are the permanent residents of Sanjeeva Nagar, Khajipet Mandal, Kadapa District. The Harijan Development Co-operative Society had owned a total extent of about Ac. 147 in different survey numbers in Chemulapalli village. The society leased out small extents of lands to 148 families of landless poor Harijans by the proceedings of its Chairman dt. 28-8-1973. The plaintiffs were granted ek-sal lease in an extent of Ac. 1.10 cents each in Section Nos. 243/1, 243/3 respectively. They reclaimed the land irrigated it through a community well and were in continuous possession and enjoyment of the lands and also raised crops. As the defendants wanted to dispossess the plaintiffs, the suit was instituted.

3. The respondents herein-- defendants, admitted that the plaintiffs were granted ek-sal lease in 1973 and were in possession of the suit schedule land as per an enquiry held in 1980. They, however contend that the District Collector as the Chairman of the Harijan Development Co-operative Society cancelled the ek-sal lease granted to the plaintiffs on 15-10-1997 and on the same day issued ek-sal lease to the defendants to cultivate the suit schedule lands as the plaintiff were not entitled to continue as beneficiaries. The 1st plaintiff is an employee who was a resident of Badwel and the 2nd plaintiff was residing in B.K. Koduru. The lands were not personally cultivated by them. The lands were being cultivated by one Sri. Yesuratnam of Kondapet village. On account of these disqualifications, the lease granted to the plaintiffs was cancelled and the suit schedule lands were allotted to the defendants. The possession of the lands was handed over to them on 8-4-1998 by the Society and since then they continued in possession and enjoyment of the lands. They also pleaded that the suit was not maintainable as the Society, a proper and necessary party, was not impleaded.

4. The suit having been decreed, the defendants preferred the appeal. The lower appellate court on an analysis of the oral and documentary evidence that the 1st plaintiff as P.W.1 had admitted in his cross examination that he was appointed as a teacher in 1976 and worked at Sidhout, Badwel and B. Matam mandals and for the last 25 years he was not residing in Chemulapalli village. P.W.1 also stated that P.W.4 Ganta Yesuratnam was cultivating the land in the village. He also

admitted that the Society was empowered to cancel the ek-sal lease. The 2nd plaintiff as P.W.2 stated that he was cultivating the suit schedule lands all along but in his cross examination stated that he did not know whether the lease granted to him was cancelled by the order dt. 15-7-1997. P.W.2 also denied a suggestion that the suit lands were cultivated by P.W.4 contradicting the testimony of P.W.1 in this regard. P.W.4 stated that he cultivated the suit lands at the request of both the plaintiffs. P.W.3, the Mandal Revenue Officer in his cross examination admitted that to his knowledge the defendants are in possession of the suit lands for the fasli year 1408 and that under Ex.A-15 proceedings of the District Collector pattas were granted to the defendants and the lands are being cultivated by them. P.W.5, a Senior Assistant in the Harijan Development Co-operative Society admitted in cross examination that the society had allotted the disputed lands to the defendants and this allotment was not cancelled. The court below also relied on Ex.B-1, a certified copy of the Adangal extract for the fasli year 1408 corresponding to 1988-89 which records that the defendants 1 and 2 have been cultivating the lands. On the basis of the above evidence, the lower appellate court concluded that it is established that by the date of the suit, the plaintiffs were not in possession of the suit schedule lands and the ek-sal lease granted earlier to them was cancelled by the District Collector under Ex.B-1 and that the defendants having taken possession were cultivating the suit lands on the date of the suit. As the plaintiffs were not in possession of the suit schedule lands as on the date of the suit, the lower appellate court concluded that they were not entitled to the injunctive relief.

5. Sri Radha Krishna, the learned Counsel for the appellants herein contend that the lower appellate court erred in failing to consider the relevant and crucial documentary evidence namely Exs.A-9, A-10 and A-17. Ex.A-9 is a letter addressed by the S.P. Kadapa to the District Collector which states that enquiries revealed that earlier lands was given to the relatives of the plaintiffs who had left the village and were residing at Badwel. The allotment in their favour was cancelled and again given to the plaintiffs. The relatives of the earlier land owners were objecting to the cultivation of the land by the plaintiffs and that the plaintiffs were now enjoying the land given by the society. Ex.A-10 is an endorsement of the Collectorate on the complaint submitted by the plaintiffs and Ex.A-17 is a note file

relating to the proceedings of the District Collector and Chairman of the Society wherein it is noted that the inspection of the disputed lands showed that the pattas were cancelled but the lands were well developed and paddy crop raised and that plaintiffs had left the village due to panic and fear and as they themselves were cultivating the land, it may be restored to them. It is significant to note that the orders of the Collector recorded on this note file is only to the effect 'please discuss'.

6. Though the failure of the lower appellate court in analyzing the effect of Exs.A-9, A-10 and A-17 would constitute a material error in the exercise of 1st appellate jurisdiction, it requires to be noticed that even if this evidence is taken into consideration, it does not displace the valid conclusions drawn by the lower appellate court on the basis of the other evidence adverted to above, that the plaintiffs were not in possession of the suit schedule lands on the date of the suit.

7. Exs.A-10 and A-17 do not establish the possession of the plaintiff to the suit schedule property as on the date of the suit. The author of Ex.A-9 has not been examined. As against such evidence the lower appellate court relying on, inter alia, the testimony and admissions of P.Ws.1 to 4, concluded that the plaintiff has not been able to establish his possession. The 2nd plaintiff (P.W.2) testified that he was himself cultivating the suit schedule land and denied the suggestion that the suit schedule land was cultivated by P.W.4. The evidence of P.W.1, that P.W.4 was cultivating his lands is therefore belied. Similarly the evidence of P.Ws.3 and 4 cast a doubt on the aspect of the plaintiff being in possession of the suit schedule land. This evidence supported by documentary evidence Exs.B-1 was considered sufficient by the lower appellate court to conclude that the plaintiffs could not establish possession and were therefore disentitled for injunctive relief.

8. Learned counsel for the appellant Mr. Radhakrishna cited authorities for the proposition that non-consideration of material including documents placed before the court, by the first appellate court constitutes a substantial question of law, by reliance on the decision in *Baratam Seethamma and Ors. v. Bora Chandravathi* : 2003(4)ALD866 and *Yadarao Dajiba Shrawane (Dead) by LRs. v. Nailal Harakchand Shah (Dead) and Ors.* : AIR 2002 SC2849 . I have already expressed

a similar view herein. On the consideration of the fact that even if the evidence not considered by the appellate court, is taken into consideration no different result would flow, I am disinclined to interfere in this Second Appeal.

9. The other decisions cited on behalf of the appellants herein are for the proposition that the person who enters premises as a lessee, on the termination of a lease would become tenant holding over and on his continuation in possession after such termination, is a tenant by sufferance and his possession cannot be disturbed without the due process of law. Such a person can maintain a suit for injunction against a true owner restraining him from disturbing his possession. These principles are unexceptionable. The point is that the appellants are rightly held by the lower appellate court to have failed to prove their possession to the suit schedule land. In such an event these principles and the decisions relied in respect of the principles are of no assistance to the appellants.

10. As the above conclusion of the lower appellate court is a conclusion on facts based on plausible interpretation of the evidence and vitiated by no perversity in the exercise of discretion or in the appreciation of evidence no substantial question of law arises for consideration in the second appeal, which is accordingly dismissed. No order as to costs.