

Durgaiah and ors. Vs. Mohd. ShabhuddIn (Died) L.Rs. and ors.

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Court : Andhra Pradesh

Decided On : Jun-24-2002

Reported in : 2004(1)ALT59

Judge : P.S. Narayana, J.

Acts : Hyderabad Tenancy Agricultural Lands Act - Sections 50B; Transfer of Property Act - Sections 53A; Telangana Area Tenancy Act - Sections 50B; Evidence Act - Sections 114; Andhra Pradesh (Telangana Area) Abolition of Inams Act; Kerala Land Reforms Act; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11

Appeal No. : Appeal No. 1479 of 1989

Appellant : Durgaiah and ors.

Respondent : Mohd. ShabhuddIn (Died) L.Rs. and ors.

Advocate for Def. : Ghulam Hussain and ;Subash Chandra Bose, Advs.

Advocate for Pet/Ap. : Sridhar Reddy and ;R. Subash Reddy, Advs.

Disposition : Appeal allowed

Judgement :

ORDER

P.S. Narayana, J.

1. The unsuccessful defendants in O.S.No. 1 of 1989 on the file of the District Judge, Medak, Sanga Reddy District are the appellants herein. Originally the suit was instituted by Mohd. Shabuddin and since he died, the Legal Representatives were brought on record.

2. The suit was filed for the relief of permanent injunction. The original plaintiff Mohd, Shabuddin instituted the suit praying for the relief of perpetual injunction restraining the defendants from in any way interfering with this peaceful possession and enjoyment of the plaint schedule properties.

3. It is averred in the plaint that the plaintiff is the pattedar and owner of the lands described in the schedule and it was also pleaded that at a particular point of time, one Tekmal Ramanna was the protected tenant of the plaintiff, relating to the plaint schedule properties. It was further pleaded that after the death of T. Ramanna, the defendants claiming to be his heirs, co-sharers and joint tenants failed to pay rents to the plaintiff from 1962 to 1972. Hence, the plaintiff initiated proceedings before the Tahsildar, Jogipet, which was later transferred to Jogipet in File No.B2/3282/70 B2/2/70, dt. 29-8-1972 against the defendants for termination of tenancy and for cultivation under the Hyderabad Tenancy Agricultural Lands Act. The said order of execution was executed on 7-6-1974 by the Revenue Inspector of Jogipet Circle and a panchanama was also conducted by him. However, at the instigation of some Communist Party Workers as a part of their land grabbing movement, the defendants entered into the land and stopped the plaintiff's agricultural operations on 14-7-1974 and in such circumstances, the plaintiff is constrained to institute a suit for perpetual injunction.

4. The present appellants in the appeal who are defendants in the suit filed written statement and subsequently they filed an amended written statement also. The specific stand taken by them is to the effect that late. T. Ramanna was the protected tenant and all the other things are false and there is no question of payment of rent. As protected tenants are having preferential rights to purchase the lands, they purchased the suit lands after paying consideration to the 1st plaintiff. It was also pleaded that as the transaction is an un-registered one, the defendants applied to the Tahsildar, Jogipet, under Section 50-B of Hyderabad

Tenancy Act, for validation of the sale. It was also pleaded that the Tahsildar has no jurisdiction to pass an order of eviction. As there were no execution proceedings, no delivery of possession has taken place at any point of time and no Revenue Inspector came to the lands nor any panchanama was prepared. Hence, there is no question of defendants trying to disturb the possession of the plaintiff. It was also pleaded that the plaintiff had never carried on agricultural operations since he was a retired Government servant and a very old man. It was also further averred that the Tahsildar allowed the petition of the defendants under Section 50-B of the Tenancy Act and issued a certificate validating the same. The plaintiffs filed an appeal before the Collector in Appeal No.A5/ 1/70 on the file of the D.P.O., Sangareddy and on 15-10-1970, the appeal was allowed and the case was remanded to the Tahsildar for fresh enquiry and it is pending with the Tahsils Office. It was specifically stated that the defendants became the owners of the suit lands from 1963 onwards. Hence, the question of terminating their tenancy and evicting them does not arise at all. Even otherwise, without validation proceedings, the defendants are entitled to the protection under Section 53-A of the Transfer of property Act and the plaintiffs neither treated the defendants as trespassers nor evicted them under the pretext of obtaining injunction. No doubt, a rejoinder was filed and on the strength of the respective pleadings.

5. Originally issues 1 to 3 were settled and subsequent there to, additional issues were framed. On behalf of the plaintiffs P.Ws.1 to 3 were examined and Ex.A-1 to A-3 were marked. For defendants D.Ws.1 to 6 were examined and Exs.B-1 to 52 were marked.

6. The trial Court on appreciation of the oral and documentary evidence came to the conclusion that the plaintiffs have been in possession of the property as on the date of the suit and it ultimately decreed the suit. Aggrieved by the same, the defendants preferred the present appeal.

7. Sri Sreedhar Reddy, learned counsel representing the appellants had mainly contended that if the dispute is to be construed as one relating to tenancy, the suit for perpetual injunction itself is not maintainable. The learned counsel however, submits that by that point of time of Ex.B-24, the appellants became the owners of

the property and hence there is no question of either terminating the tenancy or evicting the appellants/defendants from the plaint schedule properties. The learned counsel also contended that even, otherwise, the appellants/defendants are entitled to the protection under Section 53-A of the Transfer of Property Act. The learned counsel further contended that the aspect that 'as Ex.B-24 is an unregistered document, the same is not admissible in evidence' had not been raised in the trial Court. No objection had been taken before the trial Court in marking the said document. The learned counsel further had drawn my attention to Ex.B-37 to Ex.B-47 pahanis and also Exs.B-48 to B-52-Revenue Records and Ex.B-1 to B-23-Cist Receipts and had also referred to the other documentary evidence on record and hand contended that if the documentary evidence is appreciated along with the oral evidence of D.Ws.1 to D.W.6, it is clear that the alleged panchanama is only a paper panchanama and in fact, the possession was never delivered to the plaintiff. Hence, the suit should have been dismissed. The learned counsel had taken me through the judgment and the findings recorded in the said judgment by the trial court and had pointed out that the trial Court had adverted to irrelevant aspects instead of concentrating on the main question relating to the factum of possession of the parties on the date of institution of the suit. The learned counsel also commented that the burden of proof was drawn erroneously on the defendants and instead of appreciating that in a suit for perpetual injunction, the plaintiffs alone have to establish the possession as on the date of institution of the suit. The learned counsel also pointed out that the question before the Tahsildar and the issues before the Court below are totally different and hence, it cannot be said that Ex.A-4 in any way operates as res judicata.

8. On the contrary, Sri Mohd. Ghulam Hussain and Sri Subash Chandra Bose, learned counsel representing the respondents/plaintiffs in the appeal had contended that inasmuch as it is a suit for perpetual injunction, after possession had been duly delivered by the Revenue Authorities, the suit of this nature is definitely maintainable. The learned counsel had drawn my attention to Ex.A-1 Panchanama, Ex.A-2 Report of the Revenue Inspector, Ex.A-3 Original Memo given by the Tahsildar and Ex.A-4 order passed by the Tahsildar, dated 29-8-1972. The learned counsel also had drawn my attention to the other documentary

evidence on record and also the oral evidence of P.Ws.1 to 3. The learned counsel also further contended that as far as Ex.A-4 is concerned the order became final and the appellants/defendants also are bound by the same and it cannot be said that the Revenue Court is incompetent to make such an order and when that being so, the Revenue Court being a court of limited jurisdiction, the said order as between the parties operates as *res judicata* and hence, the said question cannot be raised again before the Civil Court. The learned counsel also had contended that P.W.2, the Revenue Inspector was examined and both Exs.A-1 and A-2, were duly proved in pursuance of which, in fact, possession had been taken and these are all official acts which are presumed to be properly done and hence, the findings recorded by the trial court while granting the relief on the strength of A-1 and A-2 and also on the evidence of P.W.14 are sustainable and those findings need not be disturbed. The learned counsel also submitted that it is no doubt true that relating to the admissibility of Ex.B-24, no objection was taken before the trial Court. But the fact remains that a recital clearly goes to show that the sale deed is an unregistered document, which is inadmissible in evidence. The learned counsel also had pointed out that the findings recorded by the Trial Court stating that why the Trial Court had disbelieved Ex.B-24. The learned counsel also commented about the late production of Ex.B-24, which throws an element of suspicion about the authenticity of this document.

9. Heard both the learned counsel at length.

10. It is no doubt true that as can be seen from the judgment of the trial Court, certain irrelevant aspects also had been discussed at length. But, however, on appreciation of the oral and documentary evidence and the material available on record in the present appeal, the points for consideration will be boiled out to the limited extent as stated *infra*:

(a) Whether the respondents/plaintiffs are entitled to the relief of perpetual injunction on the strength of Exs.A-1 to A-4 and the evidence of P.Ws.1 to 3;

(b) Whether the trial court had appreciated Ex.B-24, B-1 to B-23, B-37 to B-522 in proper perspective:

(c) Whether the evidence of D.W.6 had been properly appreciated by the trial Court;

(d) Whether Ex.A-4 operates as res judicata;

(e) If so, to what relief.

11. For the purpose of convenience, the points 'a, b and c' can be dealt with together. D.W.1 is the 3rd defendant. He had spoken about Ex.B-24, which is styled as sale deed, dated 13-5-1963. He had deposed that they have been cultivating the suit lands as legal representatives of T. Ramanna, the guardian of their family, who was a protected tenant above 30 years. While they were cultivating the suit lands, all of them purchased the suit lands from the plaintiff for Rs. 1,800/-. In total they purchased Ac. 16.18 guntas of land and they paid Rs. 1,000/-, but the plaintiff did not agree to register the suit lands and he refused and evaded the registration in spite of their demands and they were in possession of the land on the date of sale also. He also deposed about the filing of the petition for validation. He also deposed that one Mahaboob Ali, who is a Patwari, wrote the document and all the five witnesses were present and all of them signed the document and they paid the land revenue and they were given protected tenancy certificates. The 2nd defendant who was examined as D.W.2 also had deposed in the same way as D.W.1.

12. While appreciating Ex.B-24, it was observed by the trial Court below that viewing the matter technically, Ex.B-24 appears to have been proved, but the original plaintiff as P.W.1 had categorically denied the execution of the same. As can be seen from the findings recorded by the trial Court on the strength of the evidence of P.W.2 and Exs.A-1 to A-4, the plaintiff is in possession of the lands. It is no doubt true that no objection was taken relating to Ex.B-24, but, however, as can be seen from the recitals of Ex.B-24 it is styled as a sale deed. No doubt, some evidence was let in as though it is an agreement of sale and further, the proceedings relating to Section 50-B of Telangana Area Tenancy Act also had been discussed in a suit for injunction simplicitor.

13. The main dispute between the parties appears to be that by virtue of Ex.B-24, the defendants have been continuing in possession of the property in their independent right and no doubt, on the contrary, the stand taken by the respondents/plaintiffs is that as the Revenue Authorities had delivered possession of the plaint schedule property, their possession has to be believed. As can be seen from the material, the attestors relating to Ex.B-24 who are D.W.3, D.W.4 and D.W.5 had been examined. The learned counsel for the respondent strenuously contended that though Ex.B-24 was pressed into service and a plea was taken, no such document was produced before the Revenue Court. Hence, the finding of the Court at the first instance that Ex.B-24 cannot be relied is sustainable.

14. Reliance was placed on a decision reported in Venkatayya v. Kishtayya AIR 1956 A.P. 192, wherein it was held that a suit for perpetual injunction is not barred by the provisions of the Hyderabad Tenancy and Agricultural lands Act.

15. In the present case, the findings recorded by the trial Court relating to the possession were mainly based on Ex.A-1 to A-4. No doubt, Ex.A-4 was made by the concerned Tahsildar without jurisdiction. The learned counsel also cited a decision reported in A.L.N. Sathappa Chetti v. Thayyanayaki Ammal AIR (29) 1942 Mad. 698 wherein it was held that a receipt given by the Revenue Inspector reciting that the delivery of property was effected in pursuance of Revenue Court's order being a report of an officer made in the discharge of his duty it must be presumed that what he stated therein was true. On the strength of the ratio laid down in this decision, elaborate arguments had been advanced by the learned counsel representing the respondents. The presumption relating to the official acts under Section 114 of the Indian Evidence Act is a rebuttable presumption. It is no doubt true that material had been placed to show that a panchanama was conducted when P.W.2 was also present there. But, however, none of the persons concerned with Ex.A-1 had been examined. Apart from this aspect, there is no further independent evidence also in this regard. It is definitely known fact that despite the delivery proceedings, cist was being collected and why the cist receipts were being issued in favour of the appellants/defendants is a matter to be definitely gone into. It is pertinent to note that the stand taken by the

respondents/plaintiffs is that in pursuance of delivery proceedings issued by the Revenue Authorities, possession was taken. When that being so, why the Revenue Authorities had issued the cist receipts evidencing the payment of cist relating to the plaint schedule property also is a matter to be explained. It is no doubt true that as far as Ex.B-24 is concerned, it is an unregistered sale deed. The payment of cist by a party also is a circumstances to be taken into consideration for deciding the aspect of possession. Likewise, in the present case, both the parties are relying upon certain documents issued by the Revenue Authorities such as the payment of cist evidencing the possession on the part of the appellants/defendants and Ex.A-4 order passed by the Tahsildar and the delivery proceedings issued in favour of respondents/plaintiffs. No doubt, on appreciation of the evidence, a finding had been recorded by the trial Court in favour of the respondents/plaintiffs.

16. As far as the applicability of Section 53-A of the Transfer of Property Act is concerned, reliance was placed on a decision of this court reported in *Meram Pocham v. The Agent to the State Government (Collector), Adilabad* : AIR 1978 AP242 , wherein it was held that invalid and unlawful possession is not protected by Section 53-A of the Transfer of Property Act. Reliance also was placed on *Vadakkath Valappil Mammikutty Hajis Children Muhammad Haji v. Moonamkutty Valappil Kalliani Ammas Children Kunhunni Nair* AIR 1993 Ker. 104 relating to the aspect of jurisdiction of the appellate Court by appreciating evidence. As can be seen from the findings which had been recorded by the trial Court relating to Exs.A-1 to A-4 and also Ex.B-4, Ex.B-1 to B-23 and Ex.B-37 to Ex.B-52, they are wholly unsatisfactory for the reason that the overwhelming oral and documentary evidence adduced for the appellants/defendants had not been appreciated in proper perspective. Apart from this aspect of the matter, the tenancy proceedings also had not been appreciated and further in the very pleading itself it is admitted that T. Ramanna was a protected tenant. But, however, the trial Court had recorded findings as though they are ordinary tenants and certain observations had been made relating to this aspect. It is needless to point out that the relatives of the ordinary tenants and the protected tenants are not one and the same as per the A.P. (Telangana Area) Abolition of Inams Act. Hence, viewed from any angle, especially in the light of the fact that the ambits and the scope of the tenancy

legislation in Telangana area and their effect on the granting of the relief or refusal of the relief of perpetual injunction had not been dealt with properly and especially in the light of the fact that a specific stand is taken that Ex.A-1 panchanama is only a paper panchanama, there is no other independent evidence. I am of the considered opinion that the findings recorded by the trial Court in this regard cannot be sustained. But, however, in the light of the fact that both the parties adduced some evidence, I am of the considered opinion that inasmuch as the findings had not been recorded by the trial Court in proper perspective, in the interest of justice, the authorities should be afforded with an opportunity to let in further evidence and the trial Court is also expected to take into consideration the observations made above while deciding the matter afresh.

17. This a very crucial aspect relating to Ex.A-4. Ex.A-4 is an order passed by the Tahsildar and no doubt there is some controversy relating to the jurisdiction of the Tahsildar to make such an order, but the fact remains that Ex.A-4 was made by the Tahsildar. The Revenue Court also is a Court of limited jurisdiction within the meaning of Section 11 C.P.C. and hence, the said order definitely operates as res judicata.

18. The expression 'Court of limited jurisdiction' had fallen for consideration and the same was explained in Adiraju Hanumantha Rao v. The Deputy Commissioner, Hindu Religious and Charitable Endowments Department, Kakinada 1985 (2) ALT 453 and the bar of res judicata had been dealt with by the Supreme Court in a decision reported in Malkhan Singh v. Sohan Singh : [1986]161ITR386(SC) .

19. Likewise, a Full Bench of Kerala High Court (supra 4) while dealing with a decision of a Tribunal under the Kerala Land Reforms Act arrived at a conclusion that the decision as to the existence of such tenancy by such a Tribunal operates as res judicata. In a decision reported in Ram Sarup s/o Tule Ram Jain Agarwal v. Ram Chander it was held that the decision of a Court of special jurisdiction (Revenue Court) will be res judicata in a Court of general jurisdiction (Civil Court) provided the decision of the Court of special jurisdiction was within the jurisdiction of that Court.

20. In the light of the view expressed by me above, it is necessary to go into the other aspects. If the trial Court comes to the conclusion that the Tahsildar, Sanga Reddy has got jurisdiction to make an order, it definitely operates as res judicata.

21. In the light of the above, especially balancing the evidence let in by both the parties in Exs.A-1 to A-4 and B-24 and also the revenue receipts and pahanis, it is a matter where an opportunity should be given to both the parties to let in further evidence to substantiate their respective contentions and hence in the interest of justice, I am inclined to remand the matter to the court below for the purpose of fresh disposal in accordance with law after giving proper opportunity to both the parties, if a request is made by them and decide the matter afresh in accordance with law. It is brought to my notice that certain interim orders were made by this Court, but however, in the light of the observations made above, the parties are at liberty to move proper applications before the trial court relating to the maintenance of status quo or any other appropriate order like appointment of a Receiver.

22. The appeal is accordingly allowed. However, in the peculiar facts and circumstances of the case, no order as to costs.