

In Re: Ramanuja Naidu and ors.

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Court : Chennai

Decided On : Mar-01-1968

Reported in : (1968)2MLJ279

Appellant : In Re: Ramanuja Naidu and ors.

Judgement :

ORDER

N. Krishnaswamy Reddy, J.

1. The revision petitioners were accused 1 to 3 and 4 and 8 in C.C. No. 1303 of 1965, the file of the Sub-Magistrate, Cuddalore. Accused 1 to 3. were convicted under Sections 143, 447 read with 114 and 379 read with 114, Indian Penal Code, and they were sentenced each to pay a fine of Rs. 40, On each count, in default to undergo rigorous imprisonment for two weeks on each count-Accused 4 and 8 were convicted under Sections 143, 447 and 379, Indian Penal Code, and each was sentenced to pay a fine of Rs. 25 under each count, in default to undergo rigorous imprisonment for two weeks on each count, by the Sub-Magistrate, Cuddalore. On appeal, the convictions and sentences were confirmed by the District Magistrate, South Arcot.

2. The short point that arises for consideration in this revision petition is whether the petitioners, in the circumstances of this case, would be entitled to a bona fide claim of right to the properties in question. To appreciate this point, it is necessary

to note briefly the facts of the case.

3. One Lakshmi Ammal and her daughter-in-law one Jayalakshshmi, native of Tanjore district but residing in Cuddalore, owned about 13 acres of lands in Eachankattukuppam Village, which were leased out to P.W. 1 Ramanuja Naidu in 1962 under Exhibit P-1 the lease deed. By virtue of Exhibit P-1, P.W. 1 was in possession of the properties as lessee. The owners of the properties executed sale deeds in favour of accused-4 and his wife under Exhibits D-1 and D-2 on 30th August, 1964, for a sum of Rs. 19,800; but they were not registered. On 1st September, 1964, they executed another sale deed in favour of one Kannappan in respect of the same properties covered under Exhibits D-1 and D-2 for a sum of Rs. 28,000. This sale deed was of course registered. Having come to know that the properties were sold to Kannappan, accused-4 filed an application to the District Registrar for compulsory registration of Exhibits D-1 and D-2 and subsequent to the registration of the sale deed in favour of Kannappan, Exhibits D-1 and D-2 were compulsorily registered. In the meanwhile, Kannappan obtained a lease deed under Exhibit P-2 dated 19th September, 1964 from P.W. 1, the lessee under the original owners. P.W. 1, even after the sale deed by the owners in favour of Kannappan and accused-4 and his wife, continued to be in possession of the properties not only as a lessee under Kannappa but also a tenant holding over under the original owners. At the time of sale in favour of Kannappa, there were Ragi crops raised by P.W. 1 in some of the lands and P.W. 1 harvested the same and after harvest, he raised paddy in a portion of the lands and when paddy crops in the lands were ready to be harvested, the revision petitioners unlawfully trespassed into the lands on 30th December, 1964, threatened P.Ws. 2 to 4 who were in the lands and with help of about 300 men they had brought with them, cut and carried away the paddy crops from the lands.

4. The prosecution examined several witnesses to prove that the accused cut and removed the paddy crops raised by P.W. 1. The finding of the lower Courts is that even after the rival sale deeds came into existence, P.W. 1 continued to be in possession of the properties and he raised the crops. The learned Counsel for the petitioners was unable to challenge the finding of the Courts below that it was P.W. 1 who was in possession of the properties and raised the crops in question.

The Courts below further found that the accused cut and removed the crops raised by P.W. 1. It was contended on behalf of the revision petitioners in the lower Court that even assuming P.W. 1 was in possession of the properties and raised crops, the removal of the crops from the properties by the revision petitioners could not be said to be a dishonest removal bringing within the mischief of Section 379, Indian Penal Code, and that they are entitled to claim their right to enter upon the land as they had purchased it by sale deeds Exhibits D-1 and D-2 and thus, it is said, that their claim is bond fide. The same contention is reiterated before me by the learned Counsel for the revision petitioners. I am unable to agree with this contention. It has been found by the lower Courts as already pointed out, that P.W. 1 as a lessee continued to be in possession of the properties and he raised the crops which was subsequently harvested and removed by the revision petitioners. The bona fide claim of right can be asserted between two rival claimants. It is probable that such a claim by the revision petitioner's might be justified as against Kannappan who also claimed the property by virtue of a sale deed. But it is not the case that there was dispute between these two rival claimants. The trespass alleged was against the possession of P.W. 1. If there were no crops on the land and the crops were not raised by P.W. 1 and if the land was lying vacant and in those circumstances, one of the rival parties had entered on the property to take possession by virtue of the sale deeds in their favour, there will be a justification for the party who enters upon the land to assert a bona fide claim. The learned Counsel for the petitioners relied upon the following decisions.

5. In *Chandi Kumar Das Karmarkar v. Abanidhar Roy* : 1965 CriLJ496 , the Supreme Court has observed thus:

A claim of right in good faith, if reasonable, saves the act of taking from being theft and where such a plea is raised by the accused, it is mainly a question of fact whether such belief exists or not.

6. In that case, two rival claimants were in the picture whereas, it is not so in this case, as already pointed out by me.

7. In *S.S. Apparao v. B. Lakshminarayana* (1962) M.L.J. 629 : (1962) 1 S.C.R. 8 : (1962) 2 A.W.R. 109 : (1962) 2 S.C.J. 469, the Supreme Court held as follows in

relation to the facts of that case;

Where a bona fide claim of right exists, it can be a good defence to a prosecution for theft. The act does not amount to theft, unless there be not only no legal right but no appearance or colour of a legal right.

8. In that case also, the assertion of bona fide claim was against the rival claimant. The same principle was reiterated by the Supreme Court in *Chandi Kumar v. Abanidhar Roy* : 1965 CriLJ496 .

9. In *Narasayya v. State* (1953) 1 M.L.J. 290 : (1953) M.W.N. 89, Ramaswami, J., held in the circumstances of that case that there must be something more than a mere assertion of an untested and uncorroborated statement from the dock in order to make out the claim of a bona fide right, and that the Court must find that the plea is not a mere pretence to cover an otherwise unjustifiable act.

10. In that case also, the dispute was between two rival claimants. I am of the view that the decisions relied upon by the learned Counsel would not help him in relation to the facts of this case. The observations made in *Abdul v. Emperor* : AIR1929 Pat86 , by Fazli Ali, J., as he then was, are worthwhile to note to appreciate the position in respect of the facts of this case. It is observed as follows:

It must, however, be remembered that the claim put forward by the accused must be an honest one and it will be of no avail to him as a defence if it is found to be a mere colourable pretence to obtain and keep possession of the property. The decision on this point will depend in each case on the circumstances of that particular case, but it may be safely laid down as a general proposition that in cases where the alleged theft consists in the removal of crops grown on land, the most vital question to be investigated is as to which of the parties had grown the crops and a decision on this point, will in the majority of cases enable the Court to come to a definite conclusion as to whether the claim of the accused is made in good faith or is mere pretence, but it cannot be laid down as a universal rule that in every case where A removes crops grown by B, A necessarily commits an offence under Section 379, Penal Code.

11. I respectfully agree with the above observations. As already pointed out by me, in this case it was P.W. I who raised the crops and the revision petitioners were fully aware of it. The revision petitioners had not made out a case as to how they were entitled to the crops raised by P.W. I. On the other hand, their plea was that they raised the crops, which was negated by the Courts below.

12. In the result, the revision petition is dismissed.

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