

Undavilli Nagarathnam and Another

Vs

Reddi Satyanarayana Murthi and Others

Civil Appeal No. 1048 of 1968

(H.R. Khanna, P.K. Goswami JJ)

01.04.1976

JUDGMENT

GOSWAMI, J. -

1. This is an appeal on certificate from the judgment of the Andhra Pradesh High Court.
2. The two plaintiffs in the original suit are the appellants. They brought a suit in the court of the Subordinate Judge, Rajahmundry, for evicting defendants 1 to 3 from the properties in Schedules A, B and C for delivery of possession of A and C schedule properties either to the first plaintiff or the second plaintiff. The suit properties were owned and possessed by Meenavalli Subbarayudu of Vedurupaka (hereinafter to be described as Subbarayudu). Subbarayudu was the husband of the second plaintiff and father of the first plaintiff. He had no male issue. He had only two daughters, plaintiff 1 and defendant 4, who was the older of the two. Subbarayudu made various dispositions of his property by executing several documents during his lifetime in favour of his daughters. So did his wife, the second plaintiff. While making such dispositions he was careful enough to make provision for himself and for his wife during their lifetime. The fourth defendant was married in 1923 and defendant 1 is her son. The first plaintiff was married in 1935. After the marriage of the first plaintiff the mother executed a deed of gift (Ex. B-6) on February 13, 1935 in her favour in respect of certain land. On the same day her father also executed in her favour a deed of gift (Ex. B-7) in respect of some other land. On June 7, 1935, Subbarayudu executed another deed of gift in favour of his first daughter, defendant 4, giving her also some land (Ex. B-8). All the three documents were registered on the same day, namely, on June 11, 1935. After about nine years the mother executed a settlement deed (Ex. B-5) dated June 7, 1944, in respect of her joint 1/3 share in certain property in favour of her two daughters to be shared by them equally reserving life interest for herself. Then followed a settlement deed (Ex. A-4) of January 8, 1950, executed by Subbarayudu in favour of the first plaintiff giving her ten acres of pasture land as mentioned in C schedule. Subbarayudu father executed a registered deed dated January 23, 1950 (Ex. A-8), described as will, whereby he gave to his daughters all the properties barring a few mentioned therein and stating that after his own lifetime and after the lifetime of his wife all his movable and immovable properties would be taken in equal shares by his two daughters. On April 14, 1955, he executed a settlement deed (Ex. A-1) whereunder he gave A and B schedule properties to the first plaintiff, his second daughter. By this document the A schedule property was to be enjoyed by the first plaintiff after his lifetime and B schedule property after the lifetime of her parents. Three years later on August 4, 1958, Subbarayudu executed four more documents including a deed of revocation. Ex. B-10 is the document by which the earlier document Ex. A-1 was revoked stating that the earlier one had been brought about by fraud and misrepresentation. Ex. B-11 was executed purporting to settle his property on both the daughters to be enjoyed in equal shares after the

lifetime of their parents. Ex. B-12 was executed in favour of his wife and the elder daughter giving them a certain extent of the land in Nellore village beside the house sites and houses in Vedurupaka. It was mentioned in Ex. B-12 that after his lifetime his wife would be in possession without powers of alienation and that thereafter the elder daughter would be entitled to possession and enjoyment of the property as an absolute owner. Ex. B-13 was executed in favour of the first defendant, namely, grandson of Subbarayudu through his first daughter giving him possession of the properties in which he had life interest stipulating as the same time that he (the first defendant) should deliver forty bags of paddy and obtain receipt from him every year during his lifetime.

3. The plaintiffs' case is that Subbarayudu had leased out A and B schedule properties mentioned in Ex. A-1 on August 16, 1958, to the third defendant, the son of the second defendant and that both these defendants were in possession of the properties and tenants from that time. Subbarayudu died on May 5, 1960. After his death plaintiffs 1 and 2 basing their claim on Ex. A-1 respectively gave notice to the third defendant on June 14, 1960 and on July 11, 1960, to deliver back the lands in their possession. The third defendant replied that he was only working as a farm servant under the first defendant and the latter was the lessee under a deed dated August 4, 1958 and that the settlement deed in favour of the plaintiffs had been revoked by late Subbarayudu. The first plaintiff also had trouble with the first defendant when the latter drove away his watchman and lodged a complaint with the police claiming that he was in possession of the lands. The first plaintiff thereupon sent a notice on August 20, 1960, to the first defendant who, on the other hand, asserted his rights in the lands under a deed of settlement (Ex. B-13) dated August 4, 1958. That led to the institution of the present suit by the plaintiffs out of which this appeal has arisen.

4. The first daughter of Subbarayudu was impleaded as defendant 4 in the plaint.

5. The first and the fourth defendants filed a separate written statement. Defendant 2 and 3 filed a memo adopting the written statement filed by the first defendant. All of them repudiated the plaintiffs' claim for possession of the lands.

6. Several issues were raised, but we are concerned in this appeal only with issue 5 and the additional issue 1 which are as follows :

Issue 5. - Whether defendant 1 is entitled any protection under the Andhra Tenancy Act ?

Additional issue 1. - Whether the deed dated August 4, 1958 executed by late Meenavalli Subbarayudu in favour of the first defendant is a settlement deed or a lease ?

7. It may be mentioned that issues were raised regarding the validity of Ex. A-1, Ex. B-10, Ex. B-11 and Ex. B-13. The trial Court held that Ex. A-1 on which the plaintiffs based their suit was a valid document. The trial Court further held that the deed of revocation (Ex. B-11) were invalid. The High Court affirmed these findings of the trial Court and that controversy is closed.

8. With regard to Ex. B-13, the trial Court held it to be a true document and that it was a settlement deed and not a lease and that the first defendant was not entitled to any protection under the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (briefly the Andhra Act) and that defendant 2 and 3 were not tenants in possession of the land at the time of institution of the suit. In the view it took the trial Court decreed the suit for possession of A and C schedule properties in favour of the first plaintiff

and directing that the future profits, which would be payable by the first defendant, were to be determined in separate proceedings. The suit was also decreed in favour of the second plaintiff for possession of the B schedule properties with similar orders regarding future profits.

9. On appeal by the defendants the High Court, after hearing the parties, remanded the matter for a finding under Order 41, Rule 25, Civil Procedure Code, by framing the following issue :

Whether the plaintiffs accepted the gift of A and B schedule properties by late Subbarayudu before its revocation on August 4, 1958 by late Subbarayudu ?

The Subordinate Judge returned a finding that the gift had been accepted prior to the execution of the deed of revocation (Ex. B-10). The High Court thereafter heard the appeal and partly allowed the same.

10. The High Court, in disagreement with the trial Court, came to the conclusion that the document Ex. B-13 satisfied all the conditions of the definition of lease under Section 105 of the Transfer of Property Act and could not be treated as a settlement. The High Court further observed :

The term of lease is coterminus with the life of the lessor with the result that as soon as the life of Subbarayudu ended, the term of lease automatically expired. On the death of Subbarayudu the property would pass to the persons specified in Ex. A-1. That must be the normal incidents of the transaction under the ordinary law. At the time the transaction of lease was entered into the Andhra Tenancy Act had already come into force. Subbarayudu was the landlord and the first defendant was the cultivating tenant within the meaning of those terms in the Andhra Tenancy Act. On the death of Subbarayudu his heirs, assignees and successors would likewise be landlords and they are entitled to evict the cultivating tenants.

11. Repelling the contention of the plaintiffs that the first defendant was not the tenant of Subbarayudu at all, but only a trespasser, the High Court Held, on the oral documentary evidence as well as on the admissions of defendant 2 and 3 with regard to the possession of defendant 1 as lessee, that the defendant 1 was a cultivating tenant under the plaintiffs on the death of Subbarayudu. The High court Having come to that conclusion further held that the plaintiffs could evict the defendants only under the provisions of the Andhra Act by making an appropriate application to the Tahasildar and not the present suit the Civil Court. The High Court, therefore, granted all the prayed for the plaintiffs except that of eviction, granted all the reliefs prayed for by the plaintiffs except that eviction from A and B schedule properties which was directed to be obtained by recourse to the provisions of the Andhra Act. The High Court accordingly partly allowed the appeal refusing the prayer for eviction from A and B schedule properties but at the same declaring that the plaintiffs were entitled to the suit properties in terms of Ex. A-1. The C schedule property was not the subject matter of appeal before the High Court and decree in relation to that property was unaffected.

12. Mr. Natesan, the learned Counsel appearing on behalf of the appellants, submit that the High Court is wrong in holding that Ex. B-13 is a lease and not a settlement.

13. We have perused the document (Ex. B-13). It is true that it is described in the very opening words of the document as "settlement deed". But that recital is not decisive of the real intent of the document. Under Section 105 of the Transfer of Property Act, a lease of immovable property is a

transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transfer by the transferee, who accepts the transfer on such terms. The necessary ingredients mentioned under Section 105 of the Transfer of Property Act are found in the document (Ex. B-13). It is clear from the recitals that possession of the land was handed over by Subbarayudu to the first defendant for enjoying the same during the lifetime of Subbarayudu in consideration of "forty-three weighed bags of paddy worth Rs. 800 ... every year commencing from January 15, 1959". The document does not disclose a disposition of the property by a grandfather to a grandson out of love and affection but is a business-like instrument. To illustrate, the document refers to paddy to be delivered to Subbarayudu "without subjecting me to any expenses whatsoever and obtaining proper receipts from me." It goes on to say that "payment not borne by receipt need not be given credit to you". We are satisfied that the document (Ex. B-13) fulfills the ingredients of a lease under Section 105 of the Transfer of Property Act. The submission of Mr. Natesan, therefore, cannot be accepted.

14. Mr. Natesan next contends that Subbarayudu reserving only "life interest" in the Schedule A and B properties after he had gifted the same to the plaintiffs by Ex. A-1 on April 14, 1956, could not in law imperil their rights to possession of the same after his death by leasing out the same properties in 1958 in the manner done in view of the provisions of the Andhra Act which had already come into force in 1950. At any rate, says Mr. Natesan, it was not an act of prudent management of the properties in which he had only a life interest and the principles applicable to a mortgagee in possession under Section 76(a) and (e) of the Transfer of Property Act would be applicable in the present case and the lease will not be binding on the plaintiffs.

15. In Ex. A-1 itself, which is the sheet-anchor of plaintiffs' claim, there was reference, inter alia, to two things relevant for consideration on this aspect of the matter. Firstly, it is stated there :

I and my wife, Bapanamma, who is your mother shall during our lifetime, be in enjoyment of the A schedule mentioned property and B schedule mentioned property respectively without powers of disposition by way of gift, sale, etc., but only enjoying the produce got there by paying all government taxes.

Secondly, further :

After my lifetime you take possession of the A schedule mentioned property and after your mother's lifetime the B schedule mentioned property.

16. In the first extract just set out, Subbarayudu made it clear that during his life he would enjoy the produce of the land "got there by paying all government taxes." Subbarayudu was already an old man in 1955 and was apparently unable personally to look after cultivation of the land. His wife and younger daughter were also, perhaps, considered by him no better for the purpose. Besides, it appears that he was keen to have at least some paddy to come to him from the land during his lifetime as a source of income and perhaps thought that his grandson, the first defendant, would faithfully carry out the conditions without creating difficulties. This position does not appear to have been disapproved even by the plaintiffs during the lifetime of Subbarayudu.

17. Assuming, but not deciding, that the principles under Section 76(a) and (e) of the Transfer of Property Act may even be applicable in this case, we are unable to hold that granting of the lease to defendant 1 in the entire circumstances of the case was not a prudent act of management of the

properties. In view of the relationship of the parties, that was a natural arrangement for cultivation of the land.

18. Mr. Natesan drew our attention to several decisions of this Court dealing with Section 76 of the Transfer of Property Act and in particular to the decision in *Prabhu v. Ramdev* ((1966) 3 SCR 676 : AIR 1966 SC 1721), wherein this Court held that even in regard to tenants inducted into the land by a mortgagee cases may arise where the said tenants may acquire rights of special character by virtue of statutory provisions which may, in the meanwhile, come into operation. A permissible settlement by a mortgagee in possession with a tenant in the course of prudent management and the springing up of rights in the tenant conferred or created by statute based on the nature of the land and possession for the requisite period it was observed, was a different matter altogether.

19. Counsel submits that the present case is clearly distinguishable from the above case since prior to the execution of Ex. B-13 in 1958, the Andhra Act had already come into force and it was not a case where certain special rights were created "in the meanwhile."

20. When a person with full knowledge of the law, ignorance of which is no excuse, enters upon a lawful transaction or executes a valid document, the rights flowing from the law cannot be denied to those who are entitled to their benefit on the supposed theory of estoppel or a plea of contracting out by implication. Prabhu's case is not an authority for such a proposition which Counsel seeks to spell out. The provisions of the Andhra Act will, therefore, be attracted to the tenancy created by Ex. B-13.

21. It is further contended by Mr. Natesan that the plaintiffs are not landlords within the meaning of Section 2(f) of the Andhra Act. He also submits that defendant 1 is not a cultivating tenant under the plaintiffs.

22. By Section 2(f) of the Andhra Act,

'landlord' means, the owner of a holding or part thereof who is entitled to evict the cultivating tenant from such holding or part, and includes the heirs, assignees, legal representatives of such owner, or person deriving right through him.

23. By Section 2(c) of the said Act,

'cultivating tenant' means a person who cultivates by his own labour or by that of any other member of his family or by hired about under his supervision and control, any land belonging to another under a tenancy agreement, express or implied, but does not include a mere intermediary.

24. The High Court has found that defendant 1 was a cultivating tenant of the landlord under Subbarayudu relying on Ex. B-13 and also on admissions by the defendant 2 and 3 who conceded possession of the land by defendant 1 as a lessee under Subbarayudu and their own possession as farm servants under the first defendant. We have no reason to take a contrary view.

25. In view of our conclusion that Ex. B-13 is an instrument of lease, there is no difficulty in holding that Subbarayudu was the quondam landlord of the first defendant within the meaning of Section 2(f) of the Andhra Act. Once that is established, Section 10 of the Andhra Act takes care of the tenancy that has been created under Ex. B-13.

26. Section 10 of the Andhra Act at the relevant time reads as under :

10. (1) The minimum period of every lease entered into between a landlord and his cultivating tenant on or after the commencement of this Act, shall be six years. Every such lease shall be in writing and shall specify the holdings, its extent and the rent payable therefor, with such other particulars, as may be prescribed. The stamp and registration charges for every such lease shall be borne by the landlord and the cultivating tenant in equal shares.

(2) Notwithstanding anything contained in sub-section (1) all tenancies subsisting on the date of promulgation of the Andhra Cultivating Tenants' Protection Ordinance, 1956 (Andhra Ordinance 1 of 1956) and protected by that Ordinance, and all subsequent tenancy agreements entered into up to the commencement of this Act, shall continue for a period of five years from the 1st June, 1956 or until the expiry of the lease in the normal course, whichever is later, on the same terms and conditions as before, but subject to the determination of fair rent in case of dispute.

(3) After such termination, the landlord may resume the land from the cultivating tenant without any notice, and if the tenant does not surrender possession, the landlord may by an application before the Tehsildar obtain an order for delivery of possession in the prescribed manner.

27. Thus under Section 10(1) when Ex. B-13 was executed on August 4, 1958, the lease created would by statute continue upto August 4, 1964 and even for further periods by later amendments of the Act. Taking the original Section 10(1) itself, the landlord Subbarayudu died in May 1960 and there is no question of the lease ceasing on his death in view of the clear provision under Section 10(1). As assignees by gift the plaintiffs are landlords on the death of Subbarayudu. Under Section 11, the ownership thus being changed on the death of the landlord, the tenancy, which subsists by operation of law, will continue on the same terms and conditions for the unexpired portion of the lease under the scheme of the Act as amended. The expression "currency of the lease" in Section 11 will include the statutory extension of the lease under the provisions of the Andhra Act. Termination of tenancy under the Andhra Act is provided for under Section 13. Under Section 16, there is a special forum for adjudication of disputes under the Act including eviction of cultivating tenants. Under Section 17 the provisions of the Andhra Act override anything inconsistent therewith contained in any pre-existing law, custom, usage, agreement or decree or order of a court.

28. It is, therefore, clear that the civil litigation between the parties having established their respective rights based on the two documents, Ex. A-1 and Ex. B-13, and the plaintiffs being landlords and defendant 1 being a cultivating tenant, eviction will have to be sought for in accordance with the provisions of the Andhra Act. The High Court is right in refusing eviction through the process of the civil court.

29. In the result we are unable to interfere with the judgement and decree of the High Court. The appeal is dismissed. There will be, however, no order as to costs.

</html