

Dondeti Copi Reddy and Others

Vs

Shri Anjaneya Swamyvaru Agraharam and Another

Civil Appeals Nos. 1820-21 (N) of 1969

(Syed M. Fazal Ali, E.S. Venkataramiah JJ)

17.07.1979

ORDER

1. The appellants claim to be tenants of certain lands under two lease deeds executed in their favour by one Bachinapu Subbayya. The lands belonged to two temples which brought the present suits against the appellants for possession of the lands and for mesne profits on the allegation that the appellants were trespassers.

2. We are in agreement with the High Court that since the lessor was, at the highest, a de facto trustee, he had no power to lease the lands. In that view the appellants would be no better than trespassers and have been correctly held by the High Court not to be tenants. There is no credible evidence to show that the trustees of the temples had, at any time, by word or conduct, accepted the appellants as tenants.

3. Shri Rajendra Chowdhary, appearing on behalf of the appellants contends that the Managing Trustees of the temples had accepted the rent of the lands from the appellants, thereby creating a contractual tenancy between them and the temples. In support of this submission counsel relies on Section 2(c) of the Andhra Pradesh Tenancy Act 18 of 1956, under which, insofar as relevant, a cultivating tenant is defined to mean a person who cultivates a land belonging to another person under a tenancy agreement, express or implied. It is true that acceptance of rent may furnish evidence of a tenancy and it may even help infer an implied contract of tenancy. But we find it difficult to entertain counsel's submission for the reason that it is being made for the first time in this Court and it would be necessary to investigate into fresh facts for the purpose of determining the validity of that submission. The point which the counsel is attempting to make before us appears to have been taken in the written statement but the appellants never asked the trial Court to raise any issue on that point. In the absence of any issue it is impossible to say that there is any evidence, properly so called, showing that a tenancy agreement had come into existence between the parties by implication. In any event the landlords had no opportunity to meet such a case. If they had notice of such a case, they might conceivably have led evidence to show that the allegation made by the appellants had no foundation in fact.

4. For these reasons we confirm the judgment of the High Court and dismiss these appeals but in the circumstances, there will be no order as to costs.

</html