

Annamreddi Bodayya and Another

Vs

Lokanarapu Ramaswamy (Dead) By Lrs

Civil Appeals Nos. 1025-A and 1026 of 1971

(D. A. Desai, V. B. Eradi, V. Khalid JJ)

09.08.1984

JUDGMENT

DESAI, J. –

1. These two appeals by special leave arise from the decision rendered by the High Court of Andhra Pradesh dismissing the appeals preferred by the present appellants.
2. A few facts leading to the present appeals may be briefly stated.
3. There was a zamindari estate styled as Kottam (Tuni Estate) situated in Andhra Pradesh. The zamindar inducted the Rani of Tuni, wife of the zamindar as tenant of the lands which are the subject matter of these two appeals, in the year 1951. Appellants are described as sub-tenants inducted on the land by the head tenant and are personally cultivating the same and for long have been in undisturbed possession of the same. On the introduction of the Madras Estates Abolition and Conversion into Ryotwari Act XXVI of 1948, later styled as Andhra Pradesh (Andhra Area) Estates Abolition and Conversion into Ryotwari Act, 1948 (1948 Act for short), the estate vested in the State and the question arose as to who between the appellant and respondent is the lawful ryot in respect of the holding.
4. It may be mentioned that respondents are transferees from the Rani of Tuni, the wife of zamindar. The area covered by the deed of conveyance in favour of respondents admeasured 133 acres which included 54 acres of land involved in the present appeals. The respondents filed three separate suits being O.S. Nos. 249, 251 and 253 of 1951 on April 14, 1955 against the appellants for recovering actual possession of the land in the Court of the District Munsiff, Kakinada. It may be mentioned that O.S. No. 249 of 1951 was disposed of by a compromise between the parties and it is no more the subject matter of dispute in these two appeals. The respondents sought actual possession from the appellants alleging that they were the sub-tenants, the head tenant being Rani of Tuni wife of the erstwhile zamindar and as transferees from the head tenant they were entitled to recover actual possession from sub-tenants who had no right to continue in possessions as against the respondents. The suits were contested by the appellants on diverse grounds but only one contention survives for our consideration. The appellants contended that in view of the provision contained in Section 56(1)(c) of the 1948 Act civil court had no jurisdiction to decide inter alia the question as to who is the lawful ryot in respect of the holding because jurisdiction to decide this dispute is conferred on the Settlement Officer and sub-section (2) of the Section 56 provides that the decision of the Settlement Officer on the questions set out in sub-section (1) of Section 56 shall be final and not liable to be questioned at any rate in any court of law, which would imply that the jurisdiction of the civil court to decide these questions is ousted.

5. The trial court decreed the suits in favour of plaintiff respondents.

6. It may at once be mentioned that the contention as to want of jurisdiction was not raised in the written statement filed in the trial court. In the first appeals A.S. Nos. 96, 97 and 98 of 1957 preferred by the present appellant an application for amendment of the written statements was moved seeking to raise a contention that the civil court had no jurisdiction to entertain the suits for the reasons hereinabove mentioned. Applications for amendment were granted. The contention as to want of jurisdiction found favour with the Appellate Court. The Appellate Court held that as the estate has vested in the State a question arose under the 1948 Act as to who is the lawful ryot in respect of the holding and the civil court had no jurisdiction to decide the contention. Accordingly appeals preferred by the appellants were allowed and the plaints in the suits filed by the respondents were ordered to be returned for presentation to the proper court. The respondents preferred appeals to the High Court of Andhra Pradesh. The view of the Andhra Pradesh High Court at that time was that the civil court had jurisdiction to entertain the suits more particularly where the prayers in the suits were for a decree for possession and mesne profits and accordingly the appeals were allowed and the judgment of the First Appellate Court was set aside and the matter was remitted to the First Appellate Court for disposal of appeals on merits. On remand the appeals of the appellants were dismissed and after unsuccessful appeals in the High Court they approached this Court under Article 136 of the Constitution. Hence these appeals by special leave.

7. The only contention Mr Vepa P. Sarathi, learned counsel for the appellants canvassed our consideration is that in view of the provision contained in Section 56 of 1948 Act the civil court had no jurisdiction to entertain the suits in which one of the questions required to be examined was as to who was the lawful ryot in respect of the holding because jurisdiction to decide that issue was conferred on the Settlement Officer and his decision so far as the court was concerned was to be final. We are spared a detailed enquiry into the merits of this contention in view of the decision of this Court in *Muddada Chayana v. Karnam Narayana* ((1979) 3 SCR 201 : (1979) 3 SCC 42 : AIR 1979 SC 1320) in which this Court after taking note of the two larger bench later decisions of the Andhra Pradesh High Court categorically held that the civil court had no jurisdiction to entertain a suit in which on the advent of the 1948 Act and vesting of estate in the State one of the questions to be considered is as to who is the lawful ryot in respect of the holding. A full bench of three Judges of the High Court took the view that civil court had jurisdiction to decide that issue but a later five Judges bench overruled the same and took a contrary view. In *T. Munuswami Naidu v. R. Venkata Reddi* (AIR 1978 AP 200) a larger bench taking a contrary view reversed the earlier decision of the full bench in *Cherukuru Muthayya v. Gadde Gopalakrishnayya* (AIR 1974 AP 85 : (1973) 2 APLJ 209 : ILR 1973 AP 1204). This Court affirmed and approved the view taken in *Munuswami Naidu* (AIR 1978 AP 200) which in terms lays down that the civil court had no jurisdiction to decide the question as to who is the lawful ryot in respect of the holding. Such a contention goes to the root of the matter and its decision one way or other decides the availability of protection in matter of grant of patta. This very contention was directly and substantially raised in the suit that civil court had no jurisdiction to decide and deal with the same but Settlement Officer had the exclusive jurisdiction to decide and deal with the same. Naturally, the suits filed by the respondents in civil court were bound to fail for want of jurisdiction according to the view taken by this Court in *Muddada Chayana* case ((1979) 3 SCR 201 : (1979) 3 SCC 42 : AIR 1979 SC 1320) which was reaffirmed in the later decision in *OduRU Chenchulakshamma v. Duvvuru Subrahmanya Reddy* ((1980) 1 SCR 1006 : (1980) 3 SCC 130 : AIR 1980 SC 133).

8. Both the decisions of this Court were read over to us. They lay down the correct law. Language of Section 56 of 1948 Act more especially the provision in sub-section (1) which makes the order of

Settlement Officer final and which cannot be questioned in any court leaves no room for doubt that the issues set out in sub-section (1) of Section 56 could be decided by Settlement Officer only and in respect of them the jurisdiction of the civil is ousted. The High Court was in error in holding that the civil court had jurisdiction to entertain the suits. It may be noted that the law in this behalf has been set right apart from the decisions of this Court by the decision of the larger bench of the same High Court. If the trial court had no jurisdiction to entertain the suits the first appellate court was right in directing that the plaints be returned for presentation to the proper court.

9. Accordingly these appeals succeed and are allowed and the judgment of the High Court as well as the First Appellate Court after remand are set aside and the judgment of the First Appellate Court before the remand is restored with costs throughout.

10. Under the orders of this Court respondents were called upon to pay or furnish security for mesne profits. We are informed that sometimes they deposited the amount of mesne profits and sometimes gave security for the same. Some amount have been withdrawn by respondents. Whatever amount have been withdrawn by the respondents as and by way of mesne profits during the pendency of the proceedings in the trial court as also in this Court under any order of this Court or other court either on furnishing security or without furnishing security shall be refunded to the appellants within three months from today. Whatever amount deposited as mesne profits is still lying in deposit in any court in respect of the present proceedings may be withdrawn by the appellants. Any observation made by any court in any stage of the present proceedings on the merits of the case of either party shall not be taken into consideration by the Settlement Officer or in any other proceedings that may in the future be filled in respect of the lands involved in the present appeals.

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