

SUPREME COURT OF INDIA

Kurella Naga Druva Vudaya Bhaskara Rao

Vs.

Galla Jani Kamma Alias Nacharamma

C.A.No.4788 of 2008

(R.V.Raveendran and Lokeshwar Singh Panta JJ.)

04.08.2008

JUDGMENT

R.V.Raveendran, J.

1. Leave granted. Heard learned counsel.

2. This appeal is by the defendant in O.S. No.232 of 1979 on the file of .the Sub-ordinate Judge, Rajmundry. The said suit was filed by the respondent - plaintiff seeking possession of suit property and mesne profits. The suit was decreed by the trial court on 13.9.1988 and the decree was affirmed by the High Court on 27.9.2006.

3. The case of respondent-plaintiff in the plaint was that she is the owner of the suit schedule property (Survey No.100 of RajanagaramVillage), having purchased it under a registered sale deed dated 10.4.1957 from the previous owners Sathyanarayana Rao and Suryaprakash Rao represented by their mother Varalakshamma. She paid the entire consideration of Rs.10000/- and obtained possession of the land from hervendors. The appellant-defendant, who is her close relative (son-in-law of her husband's brother), offered to manage the suit land by identifying suitable persons to cultivate the said land. The suit land was given on lease by the plaintiff to various persons suggested by the defendant, from time to time. In the year 1971, the defendant offered that he himself will take the suit land on lease on an annual rent of 40 bags of paddy. The plaintiff agreed and accordingly, from 1971 onwards, defendant was cultivating the land. He was delivering 40 bags of paddy every year as rent, till Sankranti, 1978. He did not pay the rent by way of share in produce, due on Sankranti, 1979. Therefore, she issued a registered notice dated 12.7.1979 through her counsel, demanding payment of agreed rent and possession of the land. The defendant issued a reply dated 13.7.1979 alleging that he was not the tenant of plaintiff; that he had occupied the land in the year 1957 and had been cultivating the land ever since then in his own right; and therefore, the question of delivering possession to the plaintiff did not arise. As the defendant claimed ownership and denied being a cultivating tenant under the plaintiff, the plaintiff treated the defendant to be a trespasser from the date of such reply notice. The plaintiff prayed for a decree for possession of the suit schedule land and consequential reliefs.

4. The defendant filed a written statement claiming that he was occupying and cultivating the land from 1957 and had perfected his title by adverse possession. He contended that the plaintiff-respondent was never in possession and the sale deed dated 10.4.1957 in her favour was a nominal deed, that one Mahalaxamma (a common relative) had paid the sale consideration and was the true owner, and that plaintiff had admitted this position in an agreement dated 18.4.1959 executed by her in favour of Mahalaxamma and her husband. The defendant also contended that the suit was not maintainable for two reasons : (i) The plaintiff had stated in the plaint that she had leased the land to defendant and the relationship between them as that of landlord and cultivating tenant; and therefore, she ought to have filed an eviction petition before the Special Officer (Tenancy Court) under the *Andhra Pradesh (Andhra Areas) Tenancy Act, 1956* ('Act' for short) and civil court had no jurisdiction. (ii) A mere suit for possession was not maintainable in the absence of a prayer for declaration, as he had disputed her title to the suit property.

5. The court framed issues as to whether the plaintiff was entitled to possession; whether the defendant had acquired title by adverse possession; whether the plaintiff was entitled to mesne profits (damages for wrongful occupation); whether the plaintiff had executed an agreement dated 18.4.1959 admitting that the sale deed dated 10.4.1957 in her favour was a nominal document; whether the said agreement dated 18.4.1959 put forth by defendant was a forged document; and to what relief plaintiff was entitled. No issue was framed about tenancy or jurisdiction of the court.

6. After considering the evidence - oral and documentary, the trial court by judgment dated 13.9.1988 decreed the suit for possession (and mesne profits to be determined by a separate enquiry). The defendant filed an appeal before the High Court in FA No.1990 of 1988 which was dismissed by judgment dated 7.9.2006. The trial court and High Court have concurrently held that (i) plaintiff had established her title to the suit land by purchase under sale deed dated 10.4.1957; (ii) the sale in favour of plaintiff was not nominal as alleged by defendant; (iii) the agreement dated 18.4.1959 put forth by defendant was a fabricated document; and (iv) the defendant had failed to establish title by adverse possession. Both courts have also rejected the contentions that civil court had no jurisdiction and the suit was not therefore maintainable.

7. On the contentions urged by the defendant-appellant, the following questions arise for our consideration:

“(i) Whether the plaintiff's suit for possession in the civil court was not maintainable and whether the remedy was only by way of an eviction petition under section 13 of the Act?

(ii) Whether the suit was not maintainable for want of a prayer for declaration of title?

(iii) Whether the concurrent findings of fact recorded by the trial court and High Court that plaintiff was the owner of the suit property and that defendant had not made out title by adverse possession call for interference?"

Re: Question No. (i) :

8. The defendant submitted that the plaintiff had specifically admitted in the plaint that the defendant was her tenant in regard to suit land. He contended that in view of the said specific admission in regard to relationship of landlord and cultivating tenant, a civil suit for possession was barred by sections 13 and 16 of the Act.

9. Sections 13 and 16 of the Act relied on by the appellant read as under:

"13. Termination of tenancy -

Notwithstanding anything contained in Sections 10, 11 and 12, no landlord shall be entitled to terminate the tenancy and evict his cultivating tenant except by an application made in that behalf to the Special Officer and unless such cultivating tenant -

(a) Has failed to pay the rent due by him within a period of one month from the date stipulated in the lease deed, or in the absence of such stipulation, within a period of one month from the date on which the rent is due according to the usage of the locality; and in case the rent is payable in the form of a share in the produce, has failed to deliver the produce at the time of harvest; or

(b) Has done any act or has been guilty of any neglect, which is destructive of, or permanently injurious to the land; or

(c) Has sub-let the land; or

(d) Has violated any of the conditions of the tenancy regarding the uses to which the land may be put; or

(e) Has willfully dented the landlord's title to the land; or

(f) Has failed to comply with any order passed or direction issued by the Special Officer or the District Judge under this Act."

"16. Adjudication of disputes and appeal -

[1] Any dispute arising under this Act, between a landlord and a cultivating tenant in relation to a matter not otherwise decided by the Special Officer under the provisions of this Act, shall, on application by the landlord or the cultivating tenant, as the case

may be, be decided by the Special Officer after making an enquiry in the manner prescribed;
x x x x x"

10. It is true that the plaintiff had averred in the plaint that the defendant as closely related to her and she had entrusted the management of the schedule land to him; and that on his request, she had leased the suit land to him in the year 1971 and he had paid the rent by way of share in crop up to 1978. But the plaintiff further specifically alleged that the defendant had denied her title and claimed title in himself, and he had also denied the relationship of 'landlord and tenant'; and that therefore, the defendant was a trespasser and she was entitled to sue for possession to evict the 'trespasser'. The averments relating to defendant earlier being the tenant, furnish the factual background leading to the cause of action for the suit. The averments in the plaint should be read as a whole. If so done, it is clear that plaintiff claims that defendant is a trespasser in the suit land. Significantly, the defendant in his written statement did not allege that he was the cultivating tenant of the suit land. On the other hand, he denied the title of plaintiff and asserted ownership and title in himself by adverse possession alleging that he was in occupation of the suit property ever since 1957 in his own right. He categorically stated that plaintiff was never his landlord. Neither plaintiff nor defendant claimed or admitted that there was relationship of landlord and agricultural tenant them. To repeat, plaintiff's case was that the defendant was a trespasser. Consequently, tenancy was not an issue in the suit. Section 13 requires an application to be made to the Special Officer under the Act only when a landlord wants to terminate the tenancy and evict his cultivating tenant and not otherwise. When plaintiff's case is that the defendant is a trespasser and the case of defendant is that he was the owner and he was never a tenant of the suit land either under plaintiff or anyone else, the suit was not for eviction of an agricultural tenant, and therefore, section 13 of the Act was not attracted.

11. The appellant-defendant contended that as he had denied the title of the plaintiff, the case would squarely fall under section 13 (e) of the Act. He submitted that section 13(e) contemplated termination of tenancy and filing of an eviction petition against the cultivating tenant, if the cultivating tenant wilfully denies the landlord's title to the land; and therefore the remedy of the landlord was to terminate the tenancy and seek eviction of the cultivating tenant by making an application under section 13(e) of the Act, and a civil suit was not maintainable. Termination of tenancy and eviction petition under section 13(e) is contemplated only where (a) the defendant is the cultivating tenant; and (b) the defendant wilfully denies the landlord's title to the land. In this case the defendant denied that he was the cultivating tenant of the suit land and plaintiff claimed that defendant was a trespasser.

“Hence the first requirement for application of section 13 (e) was not satisfied. If the case of plaintiff had been that the defendant was the cultivating tenant under her and that defendant was claiming to be the cultivating tenant under someone else by setting up title in someone other than the plaintiff-landlord, section 13(e) would have certainly been attracted. In this case, as noticed above, the plaintiff alleged she was the owner and the defendant was a trespasser. The defendant asserted that he was the owner by adverse possession and denied that he was a cultivating tenant at any point

of time. When neither party to the suit claimed that defendant was the cultivating tenant, and as the suit was not for eviction of a cultivating tenant, the mere denial of the title of the plaintiff by the defendant in respect of an agricultural land, would not mean that only the authorities under the Act will have jurisdiction and that plaintiff should sue for eviction under the Act by approaching the Special Officer. Only a civil suit was the remedy to obtain possession from a trespasser. Therefore the contention that the suit was not maintainable is liable to be rejected.”

12. We are fortified in this view by a decision of this Court in *Abdulla Bin Ali V. Galappa*¹. In that case, the appellants had filed a suit for possession and mesne profits, treating the defendants - respondents as trespassers. One of the defences in the written statement filed by the respondents therein was that the civil court had no jurisdiction to try a suit as plaintiffs had pleaded in the plaint that the second defendant was the tenant of the disputed plots and therefore they could seek possession only by filing an application in the Revenue court under the Tenancy Act. This Court did not agree. This Court found that though the plaintiffs had referred to the tenancy of the second defendant in the plaint, they had filed a suit treating the defendants as trespassers, as the defendants had denied their title. This Court held that a suit against the trespassers would lie only in the civil court and not in the revenue court. This Court observed:

"6. In our opinion the High Court was not quite correct in observing that the suit was filed by the plaintiffs-appellants on the basis of relationship of landlord and tenant. Indeed, when the defendants denied the title of the plaintiffs and the tenancy, the plaintiffs filed the present suit treating them to be trespassers and the suit is not on the basis of the relationship of landlord and tenant between the parties. It is no doubt true that the plaintiff had alleged that defendant 2 was a tenant but on the denial of the tenancy and the title of the plaintiffs-appellants they filed a suit treating the defendant to be a trespasser and a suit against a trespasser would lie only in the civil court and not in the revenue court.

7. We are, therefore, of the considered opinion that on the allegations made in the plaint the suit was cognizable by the civil court and that the High Court has erred in law in non-suiting the plaintiffs-appellants on the ground that the civil court had no jurisdiction."

13. It was next contended that having regard to section 16 of the Act any dispute in regard to an agricultural tenancy had to be filed before the Special Officer under the Act. Section 16 provides that any dispute arising under the Act between a landlord and a cultivating tenant in relation to a matter not otherwise decided by the Special Officer under the provisions of the Act, shall, on an application by the landlord or the cultivating tenant, as the case may be, be decided by the Special Officer after making an enquiry in the manner prescribed. But when both the plaintiff and the defendant claim that there is no relation of landlord and cultivating tenant, there is no question of any dispute arising under the Act between them as landlord and cultivating tenant. Further to attract section 16, the person approaching the Special Officer should contend that he is either a landlord or a cultivating tenant, and admit the

existence of the relationship of landlord and cultivating tenant between the parties. Section 16 is only a provision enabling a landlord or cultivating tenant to approach the Special Officer for settlement of any dispute arising under the Act and it does not operate as a bar for a suit by an owner against a trespasser. This position is long recognized in Andhra Pradesh as is evident from the following observations of the Andhra Pradesh High Court in *D. Venkata Reddy v. B. Bhushireddy*².

"A reading of section 16(1) clearly shows that the necessary condition for the exercise of the jurisdiction by the Tahsildar under that section is the existence of the relationship of landlord and cultivating tenant. The Tahsildar has no jurisdiction to decide a dispute which is not between a landlord and a cultivating tenant."

Re: Question (ii):

14. The plaintiff had purchased the suit land under registered sale deed dated 10.4.1957. Defendant did not claim title with reference to any document but claimed to have perfected title by adverse possession. A mere claim by the defendant that he had perfected his title by adverse possession, does not mean that a cloud is raised over plaintiff's title and that the plaintiff who is the owner, should file a suit for declaration of title. Unless the defendant raises a serious cloud over the title of the plaintiff, there is no need to file a suit for declaration. Plaintiff had title and she only wanted possession and therefore a suit for possession was maintainable. We are fortified in this view by the following observations of this Court in *Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs. & Ors.*³.

"We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration."

Re: Question No. (iii) :

15. The appellant-defendant next contended that the courts below committed an error in holding that the respondent - plaintiff was the owner of the suit property and he (the appellant) had not established title by adverse possession.

16. In support of his contention that plaintiff is not the real owner and that the sale deed dated 10.4.1957 in her favour was nominal, the defendant relied on an alleged agreement dated 18.4.1959 said to have been executed by the plaintiff in favour of Mahalaxamma and her husband acknowledging that the sale deed in her favour on 10.4.1957 was nominal, and

Mahalaxmamma and her husband had paid the sale consideration for the said sale. Both the courts have rightly pointed out that neither Mahalaxamma during her lifetime nor her legal heirs after her death, had put forth any claim in respect of the suit property. The trial court and High Court also found that the stamp papers used for the alleged agreement dated 18.4.1959 were purchased on 6.10.1961 and that supported the plaintiff's contention that the defendant had used a blank stamp paper which contained the signatures of herself and her husband.

17. The defendant claimed that he had perfected his title by adverse possession by being in open, continuous and hostile possession of the suit property from 1957. He also produced some tax-receipts showing that he has paid the taxes in regard to the suit land. Some tax receipts also showed that he paid the tax on behalf of someone else. After considering the oral and documentary evidence, both the courts have entered a concurrent finding that the defendant did not establish adverse possession, and that mere possession for some years was not sufficient to claim adverse possession, unless such possession was hostile possession, denying the title of the true owner. The courts have pointed out that if according to defendant, plaintiff was not the true owner, his possession hostile to plaintiff's title will not be sufficient and he had to show that his possession was also hostile to the title and possession of the true owner. After detailed analysis of the oral and documentary evidence, the trial court and High Court also held that the appellant was only managing the properties on behalf of the plaintiff and his occupation was not hostile possession.

18. We find that both the courts have considered these two issues of fact in detail with reference to the evidence and recorded concurrent findings against the defendant. This Court will not convert itself into a third court of facts and re-examine the facts or disturb concurrent findings of facts. Neither any perversity nor omission to consider evidence nor any error of law has been pointed out with reference to consideration and appreciation of evidence by the trial court and the High Court. We do not therefore find any reason to re-examine the facts.

19. Consequently the appeal is dismissed as having no merit.

¹1985 (2) SCC 54

²AIR 1971 A.P. 87

³2008 (4) SCC 594