

SUPREME COURT OF INDIA

Kalipindi Appala Narasamma

Vs.

Alla Nageshwara Rao (D) Th.Lrs.

C.A.No.4792 of 2008

(B.N. Agrawal and G.S. Singhvi JJ.)

04.08.2008

ORDER

1. Leave granted.
2. Heard learned counsel for the parties.
3. The plaintiff-appellant, along with Bhavaraju Nagamani, filed a suit before the civil court for granting following reliefs:

“1] For a declaration of the permanent leasehold right and interest of plaintiffs 1 and 2 in respect of the plaint schedule land as per the terms and conditions of the original registered permanent lease deed dt.7-2-1951 and for consequential possession of the plaint schedule property after evicting defendants 2 to 5 therefrom; and from the respective extent in their possession as per the registered sale deeds dt. 24-11-1993 mentioned in para 10 of the plaint;

2] To pass a decree for Rs.1,68,750/- against defendants 1 to 5 towards past mesne profits or for damages for use and occupation with interest thereon at 12% per annum from the date of suit till realization.

3] For future mesne profits to be determined under separate application and for payment of the same with interest thereof at 12% per annum from the respective due dates till realization;

4] To appoint a Receiver to take possession of the plaint schedule land with the paddy crop thereon and manage the same pending disposal of the suit 5] for costs of the suit and 6] for such other reliefs as may be deemed just and necessary in the circumstances of the case.”

4. The Trial Court, after considering the evidence adduced by the parties in support of their respective cases, came to the conclusion that the civil court had jurisdiction to entertain the

suit. After deciding that issue, the Trial Court considered the merits of the case and decree the suit in the following terms:

“In the result, the suit is decreed with costs in favour of the 1st plaintiffs and against the defendants 1, 3 to 5 and the legal representatives of the deceased 2nd defendant, i.e., the defendants - 18 to 20 declaring that the 1st plaintiffs has got permanent lease hold right and interest in respect of the plaint schedule property as per the terms and conditions of the registered permanent lease deed dated 7.2.1951 and in consequence thereof directing the defendants-3 to 5 and 18 to 20 to deliver possession of the same to her within 3 (three) months from this date, failing which the 1st plaintiff is at liberty to get the same executed through from them.

The 1st plaintiff is also granted past mesne profits for 1st crop of 1994-95 and 2nd crop of 1995 and future mesne profits from the date of the suit till the date of the delivery of the possession of the plaint schedule property to her against the defendants-3 to 5 and 18 to 20 along with interest at 12% p.a. from the respective due dates till the date of realisation to be her against the defendants-3 to 5 and 18 to 20 along with interest at 12% p.a. from the respective due dates till the date of realization to be ascertained on a separate application. The suit filed for the remaining reliefs is dismissed without costs. As far as the suit filed against the defendants-6 to 17 is concerned, the same is dismissed without costs as no relief is claimed against them.”

5. Learned counsel appearing on behalf of the appellant submitted that. in view of the nature of the controversy involved in the present suit, as would appear from the relief claimed, as enumerated above, the prayer made on behalf of the plaintiff was, in sum and substance, a claim for declaration of title and recovery of possession and there is no provision under the *Andhra Pradesh (Area) Tenancy Act, 1956* [for short, "the Act"] under which the Special Tribunal can decide the question of title. Learned counsel submitted that jurisdiction of the civil court is not barred under the Act and the High Court committed an error by setting aside the decree on the ground that suit was not maintainable before the civil court.

6. Learned counsel appearing on behalf of the respondents submitted that although there is no specific provision under the Act which expressly bars the jurisdiction of the civil court, in view of Section 16 thereof reliefs claimed by the appellant could have been granted only by the Special Officer and, therefore, the High Court did not commit any error by declaring that the suit filed by the appellant was not maintainable before the civil court.

7. We have considered the entire matter. In our view, the suit jointly filed by the appellant and Bhavaraju Nagamani was, in effect and substance, for declaration of title and recovery of possession and the same was maintainable before the civil court and merely because for grant of ancillary relief claimed by the plaintiffs, including the relief of recovery of possession, the Special Officer could have been moved, the civil court's jurisdiction cannot be treated to have been ousted and the High Court committed an error in dismissing the suit on the ground that civil court did not have jurisdiction to entertain the suit.

8. Accordingly, the appeal is allowed, impugned order rendered by the High Court is set aside and the matter is remitted to that court for deciding the same afresh in accordance with law after giving opportunity of hearing to the parties.