SUPREME COURT OF INDIA

Ramisetty Naraiah

Vs.

Poluri Venkata Subbamma

C.A.Nos.5193-5195 of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

22.08.2008

JUDGMENT

Dr. Arijit Pasayat J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Andhra Pradesh High Court allowing the Civil Revision Petitions Nos. 5692 and 5695 of 1998 filed by the respondent while dismissing the CMP No. 6683 of 2005 filed by the appellant.

3. Background facts as projected by the appellant are as follows:

> "In April, 1975 the appellant herein had taken the petition schedule lands which are to an extent of Acres 5-36 cents of agricultural land situated at Pernamatta village, Santhalapadu, Patta No.2182- Survey No.158/2, Ongole District with the following boundaries - East: Government Donka, South: Land of Inabathana Ramaiah, West: Land of Gajula Kotaiah, North: Land of Adapal Jogaiah and Venkatarao. Since the time he had taken on lease the above mentioned lands, he has been regular in payment of Maktha which is a lump sum amount of Rs.1200/- towards rent per year to the schedule lands.
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> In 1979 as the appellant came to know that the husband of 2nd respondent herein i.e Mannam Sundarannaiah and one Adapa Venkatarao were contending that they had purchased the schedule lands from G. Seetharamamma who is the wife of the original Landlord and from whose brother the appellant had taken the schedule lands on lease after his death. As the respondents were contending that they will evict, appellant filed suit O.S No. 791/1979 on the file of District Munsif against 1st to 3rd respondents herein seeking permanent injunction against them and also filed an I.A. No. 3963 of 1979 seeking temporary injunction.

In the suit for the first time it came to the knowledge of the appellant herein that the 3rd respondent herein, to discharge the debts had agreed to sell the schedule lands to the husbands of the Ist and 2nd respondents herein by way of agreements of sale dated 10.9.1979. Possession continued to remain with the appellant herein and he was cultivating the petition schedule lands.

0n 13.11.1979 the temporary injunction which was granted in favour of the appellant was allowed and the temporary injunction was made absolute, against which an Appeal C.M.A. No. 111/1979 was filed by the 1 to 3 respondent herein in the court of District Court Munsif, Ongole.

On 01.07.1980 Section 15 was incorporated in the *Andhra Pradesh (Andhra Area) Tenancy Act, 1956* (in short the `Act').

On 11.12.1980 the appeal C.M.A. No.111/ 1979 which was filed by the respondents herein challenging the injunction order dated 13.11.1979 was also dismissed.

On 17.01.1981, the 3rd respondent herein contrary to
Section 15 of the Act, sold the Southern half of the schedul lands to the Ist respondent herein and Northern half of the schedule lands to the 2nd respondent herein by executing registered sale deeds. But still the appellant was in possession of the lands and he was cultivating the same.

On 17.11.1981 the appellant filed A.T.C. (Andhra Tenancy Case) which was numbered in the year 1982 and the number of the case was A.T.C. No.2 of 1982 on the file of the Court of District Munsif, Ongole (Special Officer Constituted under Andhra Tenancy Act) and in the A.T.C. he contended that the sales are contrary to Section 15 of the Act and as such they are void and sought declaration from the court (a) that he is entitled to first purchase the schedule lands, (b) that the sale deeds executed on 17.01.1981 are void (c) that respondents should execute proper sale deeds in favour of the appellant and convey the schedule lands to him.

In ATC 2/1992 the respondents herein filed their counter wherein they contended that the appellant defaulted in payment of rents and they also stated that the schedule property was sold to the respondents 1 and 2 by way of registered sale deeds dt. 17.01.1981.

On 21.09.1984, the respondents herein filed A.T.C. No. 44 of 1984 under Section 13(a) of Act and sought for eviction of the appellant and delivery of possession of the schedule lands contending that the appellant defaulted in payment of rents from 1978 to 1984. In this petition it was also contended that on 5.5.1979 the appellant had written a letter and re-delivered possession of the schedule lands to the 3rd respondent's father and subsequently after the death of the 3rd respondent's late father, the 3rd respondent herein leased out the schedule lands to one A Vankata Rao on 15.06.1979 for a period of one year.

In the year 1984 the appellant herein filed statement in A.T.C. No.44/1984 denying the contentions pleaded by the respondents and he also contended that the surrender document alleged to have been executed by the appellant herein is a false and forged one and that it is a concocted document and that as a counter blast to the suit O.S. 791/1979 as well as A.T.C. 2 of 1982, the respondents herein filed the present A.T.C. 44/1984 and he also contended that as per the Court's order he had deposited the rents in the Court. In the counter he also contended that the sale of schedule lands is bad in the eye of law as he was not offered first option to purchase the same.

On 07.11.1988, the learned Additional District Munsif, Ongole dismissed O.S.No.791/1979 holding that the Court had no jurisdiction as the dispute in the suit relates to a dispute between a tenant and a landlord and that it can be decided only by the Special Officer under the provisions of Act.

Both the A.T.Cs were clubbed together and common evidence was recorded and on behalf of the appellant herein two witnesses were examined and on behalf of the respondents herein two witnesses were examined and exhibits Al to A30 were marked and no exhibit and/or any document was marked by the respondents herein.

On 15.05.1992 the Court of the Special Officer for Tenancy Cases, Ongole (Principal District Munsif, Ongole) dismissed A.T.C No.2/1982 filed by the appellant herein and allowed A.T.C. No.441/1984 filed by the respondents herein taking the view that as the alleged agreements of sales are prior to the enactment of Section 15 of Act and as registered sale deeds are executed subsequent to the enactment of Section 15 of the Act the same are not hit by Section 15 of Act. The Trial Court also held that the appellant also committed default in payment of rents. The Court however held that there is no proof that the appellant surrendered the lands by way of a delivery receipt on 05.05.1979 and no such delivery receipt was filed.

In the year 1992 the appellant herein aggrieved by the orders passed in A.T.C. No. 2/1982 and A.T.C. No. 44/1984 filed A.T.A. No. 8 of 1992 and cross objections were filed by the respondents 1 and 2 herein against the orders passed in A.T.C. No. 44/1984 and the appellant herein filed A.T.A. No.9/ 1992 and cross objections were filed by the respondents 1 and 2 herein against the orders passed in A.T.C. No.2/1982 On 19.04.1997, the Court of District Judge, Ongole on appreciation of facts, evidence and law allowed both the appeals i.e A.T.A. Nos. 8 and 9 of 1992 filed by the appellant herein and dismissed both the cross objections field by the respondents herein. In its order the appellate Court has specifically held that there is only recital in the sale deeds about the agreement of sale. The agreements are not filed. The recital about the sale agreement is made in the sale deeds only to avoid the benefit of Section 15 of the amended Act to the tenant. Admittedly, Exhibits A2 and A3 sale deeds were executed after the amendment Act came into force. Even if there is an agreement of sale by the time of 01.07.1980 in favour of the husbands of vendees, the landlord should have issued notice as contemplated U/S. 15 (1) of the

Act as the sale had not been completed. Section 15(6) of the Tenancy Act refers to only sale, but not agreement of sale. Though sale can be made under a registered document, consent was not obtained prior to the amended Act and also no suit for specific performance was filed and that it is not known why the purchases under the agreement of sale on 10.9.1979 kept quite for about one year and four months in obtaining the sale deeds in the name of their nominees. The circumstances under which the agreements of the sale were executed and obtained sale deeds in the name of the wives of the agreement holders and filing of A.T.C. 44/1984 by one of the landlords and vendees give rise to suspicion that only to evict the tenant from the land, the landlord set up to plea that the land was leased out to another person A. Venkata Rao and the land was agreed to be sold to the husbands of vendees and executed agreements of sale. The collusion can also be seen in filing of A.T.C. 44 of 1984. All the vendors did not join in A.T.C. 44 of 1984. Only R.1 and vendees joined in A.T.C. 44 /1984 for evicting the tenant. There is no need for R.1 to join as a party in A.T.C. 44 / 1984 to evict the tenant as by then the title was conveyed to the vendees and R1 had no interest in the land. Only to protect his right to evict the tenant in case the sale deeds are found to be void, he joined in A.T.C. 44/1984. As the amended Act provided an option for the tenant to purchase the land the landlord had to first give notice to the tenant in case he wants to sell the lands. To avoid such notice, sale deed were obtained in the names of the wives in pursuance of the agreements of the sales. Even though there was an agreement of sale prior to amended Act, the agreement of sale is not enforceable as it contravenes the provisions of section 15 of the amended tenancy Act and Section 17 of the Act reads "The provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any pre-existing law; custom, usage, agreement or decree or order of Court." The appellate Court has also negatived the contentions of the respondents that the appellant has committed default in payment of rents. So holding, appellate Court allowed both the A.T.A. Nos. 8 and 9 of 1992 and dismissed the cross objections in both the appeals.

In 1997 after the A.T.A.s were allowed, the appellant herein filed O.S. No.619 of 1997 in the Court of Principal Junior Civil Judge Ongole, against respondents 1 to 12 in A.T.C. 21 1982 and sought a direction to be given to the respondents 1 to 12 therein to execute a registered sale deed in favour of him for the schedule property.

In 1998, aggrieved by the orders passed in both A.T.A. 8 and 9 of 1992 only the respondents 1 to 3 filed C.R.P. Nos.5692 and 5695 of 1998 under Article 227 of the Constitution of India, 1950 in the High Court of Judicature of Andhra Pradesh.

On 20.10.2000, the Court of Principal Junior Civil Judge, Ongole by its judgment allowed O.S. No.619 of 1997 directing the defendants therein to execute a sale deed in favour of the plaintiff (appellant herein) for the schedule lands.

On 22.09.2005, the respondents 1 and 2 filed C.M.P. No.6683/2005 in C.R.P. No.5695 of 1998 and sought to implead respondents 2 to 12 in A.T.C. No.2/1982 who are legal heirs of original landlords as respondents 5 to 15 in C.R.P. No.5695 /1998.

On 3.09.2005 the High Court of Judicature of Andhra Pradesh by a common judgment allowed both the C.R.Ps. i.e. 5692 and 5695 of 1998 and dismissed C.M.P. No. 6683 of 2005 filed by the appellant.

According to the appellant the alleged agreement for sale was in favour of the husbands of R1 and R2. There was nothing indicated in the said agreements that there can be execution in favour of any other person or nominee. The stand taken was that the property was leased out to somebody else and not to appellant. It is his case that Section 15 of the Act makes the position absolutely clear that when there is an intention to sell the land leased to a cultivating tenant, such tenant shall be first given notice of the intention to sell such land and requiring him to exercise his option to purchase the land. Only in case the cultivating tenant does not exercise his option, it can be offered to somebody else. The High Court has erroneously come to the conclusion that since the alleged agreement for sale was executed prior to introduction of the provision, the provision has no applicability.

According to learned counsel there was no discussion even of the ingredients of the provision and in any event of sub section (6) of Section 15 and Section 17 of the Act. It is pointed out that R-3 had filed an application to the effect that he does not want to press the petition before the High Court. On that basis, his name was deleted from the array of parties and he was added as respondent No.4. The question of default therefore becomes redundant as the District Court has dismissed the eviction petition which was filed on the ground of default. The effect of the prayer made by the respondent No. 3, who was a petitioner in the Civil Revision Petition, was also not considered by the High Court."

4. It is the stand of learned counsel for the appellant that the object of Section 15 is to protect the interest of the cultivating tenant. Therefore, in case the landlord intends to sell the land, he has to first give option to the cultivating tenant. Even if there was an agreement earlier to the introduction of the provision, that is really of no consequence as otherwise the provisions of Section 17 would become redundant. It is, therefore, submitted that though the provision according to the High Court came into force with effect from 1.7.1980 and the agreements were purportedly entered into on 10.9.1979, the sale deed was executed on 17.1.1981. The High Court, it is submitted, has not also considered the question whether the sale deeds could have been executed in favour of the respondents 1 & 2 when admittedly the purported agreement for sale was entered into with their respective husbands.

5. In reply learned counsel for the respondents submitted that High Court's judgment is in order because what is stated in Section 11 of the Act. According to him, even if there is a change in ownership of the land the cultivating tenant continues the tenancy on the same terms as before. It is pointed out that Section 15 shall came into operation only when there is

an intention to sell the land. That intention in the present case was already expressed and agreement for sale was executed prior to introduction of the provision in question.

6. We find that the trial court has not considered the effect of the sub-section (6) of Section 15 and Section 17. The relevant provisions read as follows:

> "Section 15. Cultivating tenants' right to-first purchase the land leased to him: (1) Any landlord intending to sell the land leased to a cultivating tenant shall first give notice to such cultivating tenant; of his intention to sell such land, and requiring him to exercise his option to purchase the land. The particulars to be specified in the notice and the time within which the option shall be exercised by cultivating tenant shall be such as may be prescribed. (2) to (5).....
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> (6) Any sale of the land by the landlord in cultivation of this Section shall be voidable to the option of the cultivating tenant."
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> "17. Act to override contract and other laws:-
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> The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any pre-existing law custom, usage, agreement or decree or order of a Court."

7. Section 17 has overriding effect. As a bare reading of the provision makes it clear, it inter-alia provides that notwithstanding anything inconsistent contained in any pre existing law, custom, usage, agreement or decree or order of the court, the provisions of the Act shall have effect. Similarly, sub-section (6) of Section 15 provides that any sale of the land by the landlord in contravention of Section 15 shall be voidable to the option of the cultivating tenant. The High Court has come to an abrupt conclusion that since the agreement to sell was purportedly executed prior to the introduction of the provision, they have no relevance. There is no discussion as to the effect of the provisions, and the specific reference to agreements. Additionally, the High Court has not dealt with the aspect as to whether it could have gone into the question of default when respondent No. 3 who was shown as the petitioner in the Civil Revision Petition did not want to pursue the petition.

8. In the aforesaid background we deem it proper to remit the matter to the High Court to hear and dispose of the Civil Revision Petitions afresh and deal with the aspects highlighted above. We make it clear that we have not expressed any opinion on the merits. Since the matter is pending since long, we request the High Court to dispose of the petitions as early as practicable preferably by the end of February, 2009.

9. The appeals are accordingly disposed of. No costs.