

SUPREME COURT OF INDIA

Pinninti Kistamma

Vs.

Duvvada P. Chowdary

C.A.Nos.6900-6906 of 2001

(Tarun Chatterjee J.)

08.01.2010

JUDGEMENT

Tarun Chatterjee, J.

1. These two batches of appeals are directed against the judgment and decree dated 27th of March, 1997 passed by the High Court of Andhra Pradesh at Hyderabad in Second Appeal Nos. 361 of 1996 & batch and Second Appeal Nos. 374 of 1996 & batch and also against the judgment and order dated 10th 1 of September, 1997 of the same High Court in Review Petition Nos. 6980 of 1997 and batch whereby the High Court modified its earlier order dated 27th of March, 1997.

2. The Appellants in CA Nos. 6900-6906 of 2001(hereinafter called the `Tenants'), filed O.S. Nos. 43 of 1980 and batch (7 suits) claiming tenancy rights in respect of 19.80 Acres of land in Kambirigam Village and also prayed for permanent injunction restraining the Respondents in C.A.Nos.6900-6906 of 2001, who are also the appellants in C.A.Nos.6907-6946 of 2001 (hereinafter called as the `Landlords') from interfering with their possession over the said land. The Landlords also filed Cross Suits being OS Nos. 75/1980 and batch (13 suits) praying for injunction restraining the Tenants from interfering with the peaceful possession of an extent of land measuring 181 Acres which also included the aforementioned 19.80 Acres.

3. The case of the Tenants in their suits was that the plaint schedule lands formed a part of the pre-settlement un- enfranchised Inams in Kambirigam Mokhasa in the erstwhile Tarla Estate, Tekkali Taluk. They had been cultivating the plaint schedule land as tenants from time immemorial under inamdars, predecessors-in-interest of Landlords by paying Rajbhagam paddy to them. In 1804, the British Government granted "Sannad" to the Tarla Estate wherein Kambirigam was described as a Jagir which was an Estate within the meaning of Section 3 of the Estate Land Act, 1908. However, no patta was granted to the Landlords or their predecessors-in-interest.

“Therefore, according to the tenants, the rights of the Landlords in respect of the lands in question vested in the Government by virtue of Madras Estates Abolition and Conversion into Raiyotwari Act of 1948. (for short `Estates Abolition Act'). The tenants had complained to the Revenue Authorities alleging that the Revenue records were manipulated by the Landlords.

Pursuant to this, Tehsildar, Palasa conducted an enquiry wherein it was found that the Tenants and other raiyots were occupants and cultivators in the Revenue Records for Fasli 1389. Being aggrieved by these orders, Landlords filed a Writ petition, which came to be registered as W.P.No. 3189 of 1980 before the High Court of Andhra Pradesh claiming that they were not given an opportunity to be heard in the enquiry conducted by the Tehsildar. Allowing the Writ Petition, the High Court vide its order dated 24th of August, 1982 quashed the order of the Tehsildar. However, the High Court had given liberty to the Tehsildar to conduct a fresh enquiry after giving due hearing to the parties. Accordingly, the Tehsildar Palasa, conducted an enquiry again and passed an order dated 10th of September, 1984, declaring the Tenants and others as cultivators in Kambirigam village and further observed that since the time of their ancestors, the Tenants and others had been cultivating the lands in dispute separately and also making payment to the Mokhasadars. This order was confirmed by the Collector and Commissioner of Land Revenue.”

4. In the cross suits filed before the District Munsif, the Landlords claimed to be the Mokhasadars of Kambirigam Mokhasa. According to them, the Plaint Schedule Lands are their absolute property which fell to their respective shares in the family arrangement among their respective family members inter se in or about the year 1945. Ever since such arrangement, they had been in exclusive possession and 4 enjoyment of their respective land as described in the schedule of the plaint. According to the Landlords, Kambirigam village did not fall within the ambit of Section 2(d) of the Estates Abolition Act. No patta was granted to the Landlords because the village was not surveyed.

5. By its judgment and order dated 21st of July, 1987, the District Munsif, Palasa, decreed the suits filed by the Tenants praying for an order of permanent injunction, restraining the Landlords from interfering with their plaint schedule lands. By a separate order, District Munsif dismissed the cross suits filed by the Landlords praying for an order of injunction against the Tenants.

6. Being aggrieved by the said judgment of the District Munsif, Palasa dated 21st of July, 1987, the Landlords preferred two sets of Appeals before the Principal Subordinate Judge, Srikakulam. From the suits filed by the Tenants, i.e. O.S. Nos. 75 of 1980 and batch the appeals were numbered as A.S.No.12 of 1996 and batch (i.e. 13 appeals) and from the suits filed by the Landlords, i.e. O.S Nos. 43 of 1980 and batch the appeals were numbered as A.S. No. 11 of 1996 and batch 5 (i.e. 7 appeals). The Principal Subordinate Judge, Srikakulam, by two judgments dated 15th of April, 1996 delivered separate judgments in 13 appeals (A.S No. 12 of 1996 and batch) and 7 appeals (A.S. No. 11 of 1996 and batch).

7. Disposing of the seven appeals in A.S.No.11/1996 and batch, the Principal Subordinate Judge noted that before the Trial Court, the plaintiffs and defendants in all seven suits, had taken similar pleas. After narrating the contentions of both the parties and examining the materials on record, the first appellate court came to a finding of facts, inter alia, as follows :

8. The tenants did not dispute the contentions of the landlords that their ancestors became the landlords in respect of the plaint schedule land. According to the tenants, their ancestors were inducted into possession of separate bits of plaint schedule lands by the ancestors of the landlords. The said tenancy was alleged to have been continuing till the date of filing of the suit. In an enquiry conducted by the Settlement Officer on an application filed by one of the landlords to determine whether Kamibirigam village was an Inam Estate or not, none of the tenants appeared before the Settlement Officer. The said landlord had contended that he and his ancestors owned almost all the land in the village, though they let out a few bits of lands to some raiyots for seasonal cultivation temporarily. Thus, by his order dated 29th of June, 1950, the Settlement Officer held that Kamibirigam village was not an Inam Estate. It was not the case of the tenants that they had been inducted in possession of the plaint schedule land after the order of the Settlement Officer. Admittedly, they had no documents proving their possession. That the names of the landlords were recorded in the revenue registers as personal cultivators was also not denied. The contention that since the tenants were not residents of Kamibirigam village on the date of the enquiry by the settlement officer, they could not appear before him, could not be accepted. If numerous tenants were put in possession of tiny bits of land measuring 300 Acres in respect of which the enquiry was conducted, at least one of them would have come across the notices put up announcing the enquiry. In a suit filed by the landlords before the Subordinate Judge, Srikakulam for a declaration that Kamibirigam village was not an estate, a finding was recorded that there were no tenants in the village. The Government which was a party to the suit, did not dispute this. An appeal preferred against the Order of the Subordinate Judge was dismissed. Until 1976, when the tenants submitted applications to the Sub Collector, Tekkali stating that they had been cultivating the lands in Kamibirigam Village, paying 'Ambaram' to the Mokhasadars, no case was ever made out by the tenants that they had been tenants in Kamibirigam village.

“In 1977, one of the landlords filed a suit claiming similar relief as in the present case against some of the tenants and the tenants did not even contest the said suit. Admittedly, they knew of the suit. The specious justification for not contesting the suit was that they were under the impression that the suit was compromised. This plea could not be accepted. In the absence of any indication that there were tenants in the lands of Kamibirigam village till 1977, the mere allegation that the names of the landlords were wrongly recorded in No.2 Adangal, could not be accepted. The Tehsildar, Palasa by his order dated 18th of June, 1980 held that there were about 30 8 tenants in Kamibirigam village but such an order was passed without giving any notice to the landlords. In the fresh enquiry conducted in accordance with the directions of the High Court issued on a writ petition filed by the landlords,

applications filed by 60 other tenants were considered. The concerned Tehsildar by his order dated 10th of September, 1984 held that sizable land of Kambirigam village was under the cultivation of the tenants. This order was confirmed by the Collector. On this basis, the tenants disputed the veracity of the findings recorded by the Settlement officer and by the Subordinate Judge. The Tehsildar was of the opinion that as there was enough material to give rise to a doubt that the landlords had not been cultivating the entire cultivable land in the Kambirigam village, the benefit of doubt should be given to the hard pressed poor raiyots, as against the landlords who were rich and influential. Thus, the order of the Tehsildar was not based on any reliable and acceptable documentary evidence.

The particulars of land, or rent or tenants were not mentioned in the findings. The particulars of land mentioned in the applications filed before Sub-Collector by the tenants, do not tally with those in the plaint schedule, based on the order of the Tehsildar. Hence, it is evident that the Tehsildar did not conduct the enquiry properly. Padi Narayana, the first defendant in all except one suit, had denied that he had been a tenant in the suit lands and had averred that he had been falsely impleaded in the said proceedings. Yet, he appeared as a tenant in the findings given by the Tehsildar. Thus, the order of Tehsildar was found not to be based on proper and legal evidence. On the other hand, the names of the Landlords have been recorded in the revenue registers as the personal cultivators of the plaint schedule lands in the No.2 Adangal till 1979, i.e. for which these batch suits were filed. As against this, neither the tenants entered the witness box to support their specific cases, nor did they produce any reliable documentary evidence to rebut the entries in the record. The testimonies of witnesses they produced were not reliable.”

9. Disposing of A.S.No.12 and batch i.e. the 13 appeals filed by the landlords from the Original Suits filed by the Tenants, the Principal Subordinate Judge, inter alia, held that none of the Tenants disputed the title of the Landlords over the land in 10 Kambirigam village. While the Tenants, who were the plaintiffs in this batch suits should have established that they had the possession over the plaint schedule lands by virtue of the tenancy granted in their favour by the predecessors of the Landlords, none of them entered the witness box in support of their case. The particulars of origin of the alleged tenancy were not given in any of the plaints. The testimony of the only witness produced by the Tenants was self serving and was not corroborated by any other evidence, as he was too young to know the particulars of the alleged tenancy, which had allegedly been in existence since time immemorial. Again, reference was made to the discrepancies in the description of land in plaint schedules and in the applications filed before the Sub-Collector, Tekkali. It was pointed out that the Tehsildar's report on which the Tenants had placed reliance was not based on legal and relevant evidence. As the burden of proof was on the Tenants, the mere failure of the Landlords in establishing that they had been personally cultivating the plaint schedule lands alone would not enable the Tenants to get a permanent injunction against them in respect of 11 particular bits of plaint schedule lands.

10 Accordingly, the first appellate court allowed the appeals of the landlords and dismissed the suit of the tenants against which second appeals were preferred by the tenants before a learned Single Judge of the Andhra Pradesh High Court which came to be registered as S.A.Nos.361 of 1996 and batch and S.A.Nos.374 of 1996 and batch. The second appeals were directed against both the judgments and decrees dated 15th of April, 1996 passed by the Principal Subordinate Judge, Srikakulam in two batches of First Appeals, i.e. A.S.Nos.11 and batch and A.S.Nos.12 and batch. The High Court by the impugned judgment allowed all the Second Appeals, numbered as above.

11. It may be noted that the Learned Judge in the impugned judgment, however, stated that "these second appeals arise out of a common judgment dated 15th of April, 1996 in A.S.No12 of 1996 and batch on the file of the Principal Subordinate Judge, Srikakulam, reversing the judgment and decree in O.S.No.87 of 1980 on the file of the District Munsif, Palasa."

12. Before the High Court in the second appeals and batch, the following questions were taken into consideration:

“1. Whether the Sannad granted in 1804 to Tarla Estate describing Kambirigam village as Jagir assumed the character of an "Estate" within the meaning of Estate Abolition Act to the effect that the Landlords could dispossess the Tenants on that count?

2. Is the Civil Court empowered to set aside the orders of the three statutory authorities viz. Tehsildar, District Collector and the Commissioner of Land Revenue, when no challenge was made to their orders holding the Tenants as cultivators of the land in question?”

13. After perusing the judgments of the courts below, however, the High Court was of the opinion that the question whether the Sannad granted in 1804 assumed the character of an Estate within the meaning of Estate Abolition Act was of no consequence at all, because factum of the grant of sannad in 1804 itself was doubtful. The Tenants had not adduced any evidence to prove that the rights of the Landlords, if any, had vested in the Government. In the impugned judgment, the High Court came to a conclusion that the issue No.1 should not be examined in view of the aforesaid conclusion arrived at by it. For appreciation of the finding arrived at by the High Court, we may reproduce the same.

"However, on going through the plaint O.S No.75/80 it appears that no plea was made in that regard. The only averment made in the plaint is to the effect that the plaint schedule land was a portion of the pre-settlement unenfranchised inam in Kambirigam Mokhasa in the erstwhile Tarla Estate, and the Tarla Estate was abolished by the Government under the Act XXVI of 1948 but Kambirigam Mokhasa village was not taken over as it was not an "Estate" or an Inam Village within the meaning of the Abolition Act and that no patta was granted either to the defendants or

their predecessors in interest either under the Abolition Act, 1948 or Act XXXVII of 1956. The defendants therefore lost their right, if any, in the plaint Schedule land as it vested in the Government as stated in the concluding part of Para 3 of the Plaint. The Plaintiffs, who are the appellants before us do not seem to have produced any document in respect of these averments made in paragraph 3 of the plaint. I am, therefore, of the opinion that no useful purpose would be served in examining this question whether the respondents acquired nay right to dispossess the appellants.”

14. We have carefully examined these findings of the High Court and after carefully examining the same, we do not find 14 any reason to differ from the conclusions arrived at by the High Court on such question. Accordingly, we agree with the views expressed by the High Court on the question No.1 as noted herein above.

15. Let us now consider the question No.2 as noted herein earlier. The said question is whether the Civil Court was justified in setting aside the orders of three statutory authorities, namely the Tehsildar, the District Collector and the Commissioner of Land Revenue without there being any challenge to these orders.

16. On this question, the High Court, after considering the relevant statutes on the subject and after considering the material evidence on record came to a conclusion that the decision of the Tehsildar which came subsequent to the filing of the suit i.e. on 10th of September, 1984, which was affirmed by the District Collector and the Commissioner of Land Revenue, had achieved the status of finality. The High Court even came to the conclusion that even independent of that proposition the evidence, however, thin it may be, has weighted in favour of the persons who claimed to be the 15 cultivators of the disputed lands. In the impugned judgment, the High Court had accepted the finding of the Tehsildar which stood in favour of the tenants that they had been cultivating the lands in question since time immemorial. In view of the findings arrived at, the Appeals of the Tenant were allowed by the High Court in S.A.Nos.361, 365, 366, 374, 383, 384, 391, 393, 394, 395, 396, 397, 398, 399, 400, 401,402, 403, 404 of 1996, and the judgment of the First Appellate Court in A.S.No.12 was set aside.

17. While accepting the order of the Tehsildar dated 10 th of September, 1984, the High Court referred to the provisions of Andhra Pradesh Record of Rights in Land Act, 1971 and after considering the decisions of *Abdulla Bin Ali v. Galappa*¹, *State of Tamil Nadu v. Ramalinga Samigal Nadam*² and *Sangubhotla Venkataramaiah v. Kallu Venkataswamy*³ which discussed the principles relating to exclusion of jurisdiction of the Civil Courts by Statutory Tribunals, came to the conclusion that the order of the Tehsildar dated 10th of September, 1984 having achieved the status of finality cannot be upset by the 16 Civil Court. The High Court further found that the Tenants were cultivating the land in question and, therefore, they were entitled to a decree for permanent injunction against the landlords and accordingly the High Court allowed S.A.Nos.361, 365, 366, 374, 383, 384, 391, 393, 394, 395, 396, 397, 398, 399, 400, 401,402, 403, 404 of 1996, and the judgment of the First Appellate Court in A.S.No.12 was set aside.

18. That apart, from the impugned judgment, it is found that the High Court concluded in the following manner:

".... the fact remains that the decision of the Revenue Authorities which came subsequent to the filing of the Civil Suits stood unchallenged and not contradicted.

The Tehsildar order dated 10th of September 1984, therefore, achieved the status of finality. On that account, therefore, the Landlords lost complete ground for denying the tenancy rights of the Tenants-Appellants over the disputed lands. However, even independent of that proposition the evidence howsoever thin it may be, has weighed in favor of the persons who claim to be cultivators of the disputed land. The Tehsildar's second report speaks volumes about the tenant's case that they have been cultivating the disputed lands since the times of their 17 ancestors and I am loath to disregard the same.

The Tenants-Appellants' appeals therefore deserve to be allowed. Hence the appeals bearing no. 361, 365, 366, 367, 374,383,384,392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 401,403 and 404 of 1996 are allowed and the impugned judgement and the order dated 15.04.96 in A.S. No. 12 of 1996 and batch of lower appellate court is quashed and set aside.

No costs."

19. In view of our discussions made herein above and in view of the fact that the High Court had granted a decree for permanent injunction in favour of the tenants mainly on the basis that the tenants were in possession and cultivation of the disputed lands and after considering the fact the landlords had failed to prove their possession and cultivation in respect of the lands in question by producing reliable and material evidence before the court. Accordingly, as noted herein above, by the impugned judgment, the High Court had allowed the second appeal and granted a decree for permanent injunction in favour of the tenants/appellants who are respondents before us. Such being the position, we do not find any merit in 18 these appeals so far as the Landlords/appellants are concerned. However, the Landlords filed a review petition being Review Petition No.6980 of 1997 and batch against the group of second appeals, namely, S.A.No.361 of 1996 and batch under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure. Among the many grounds that were taken, the High Court found merit only in one ground which is as follows- 1) When there was no defence and no proof emerging from the documentary or oral evidence, the suits filed by the Landlords could not be dismissed as the extent claimed by the Tenants/appellants was only 19.80 Acres.

20. Accordingly, the Court found it proper to insert a clarification in the operative part of the judgment under review:

"The Tenants appeal covering a total extent of Ac 19.80 cents therefore deserved to be allowed. Hence the Appeals bearing Nos. 361/96, 365/96, 366/96, 367/96, 384/96, 392/96, 393/96, 394/96, 395/96, 396/96, 399/96, 400/96 and 401/96 are allowed, covering a total extent of Ac. 19.80 cents as mentioned in the schedules in the respective plaints filed by the tenants out of the total 19 extent of Ac. 181.90 cents of lands claimed in the respective plaints filed by the landlords in their respective plaints and the impugned judgment and order dated 15th of April 1996 in A.S. No. 12 of 1996 and batch of the Lower Appellate Court is quashed and set aside. The Landlords' claim to the aforesaid extent of A.C No. 19.80 cents, thus, stands dismissed and to that extent only the Second Appeals Nos. 374/96, 383/96, 397/96, 398/96, 402/96, 403/96 and 404/96 stand partly allowed. No costs."

21. So far as the order of the High Court in the review petition and batch is concerned, we do not find any ground to upset the order passed in review petition as we find that the High Court in the original judgment in the second appeals had considered not only the second appeal being A.S.No.12 of 1996 and batch but also the second appeal filed against A.S.No.11 of 1996 and batch. That apart, the tenants/respondents filed their suit for permanent injunction limiting their claim to the extent of 19.80 Acres of land and, therefore, the High Court was fully justified in reviewing the said judgment allowing the second appeal of the tenants only to the extent of 19.80 Acres of land. Accordingly, we do not find any ground to interfere with the order of the High Court reviewing the second appeals and batch in the manner indicated above in the exercise of our discretionary power under Article 136 of the Constitution.

22. For the reasons aforesaid, we do not find any merit in these appeals filed before this Court and, accordingly, the appeals are dismissed. There will be no order as to costs.

¹AIR 1985 SC 577

²AIR 1986 SC 794

³AIR 1976 AP 402