SUPREME COURT OF INDIA

Agnigundala Venkata Ranga Rao

Vs.

Indukuru Ramachandra Reddy

C.A.No.5817 of 2012

(Abhay Manohar Sapre and Navin Sinha,JJ.,)

13.04.2017

JUDGMENT

Abhay Manohar Sapre,J.,

1. This appeal by certificate is filed by the plaintiff against the final judgment and order dated 28.10.2011 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Appeal Suit No.4141 of 2003 whereby the High Court allowed the appeal preferred by the defendants(respondents herein) and reversed the final judgment and decree dated 22.09.2003 of the Additional Senior Civil Judge, Narasaraopet in Original Suit No. 98 of 1998.

2. In order to appreciate the issue involved in the appeal, which lies in a narrow compass, it is necessary to state few relevant facts taken from the appeal paper books.

3. The appellant is the plaintiff whereas the respondents are the defendants in the civil suit out of which this appeal arises.

4. The subject matter of this appeal is an agriculture land measuring Ac.13.38 cents in Survey No. 436 and Ac. 9.38 cents in Survey No. 826 (total land-22 acres 76 cents) situated in -Agnigundala Village of Ipur Mandal, District Guntur Andhra Pradesh (hereinafter referred to as the "suit land").

5. The appellant owned several acres of agriculture lands, which also included the suit land. The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short, "the Act") was enacted on 01.01.1973. It came into force on 01.01.1975. The appellant being a "person" as defined under Section 3(o) of the Act and was holding the land in excess of the limits prescribed under the Act filed a declaration in respect of his holding before the Tribunal as required under Section 7 of the Act. During the pendency of his case before the Tribunal, the appellant sold the suit land vide sale deed dated 16.07.1975 to the respondents. The sale deed, inter alia, recited that the appellant has also delivered possession of the suit land to the respondents. Respondent No. 1 then mortgaged the suit land along with his other

lands to the State Bank of India and obtained loan wherein the appellant had stood as the guarantor.

6. The Tribunal, on 21.08.1976, passed an order in CC No.2311/VKD/75 under Section 7 of the Act and held inter alia that the appellant was holding the land in excess of the limits prescribed in the Act. It was further held that so far as the transfer of the suit land made by the appellant in favour of the respondents vide sale deed dated 16.07.1975 is concerned, the same was void because it was effected by the appellant after the Act had come into force which was prohibited under Section 7(2) read with Section 17 of the Act. The appellant was, therefore, directed to surrender the excess land held by him in favour of the State as provided in the Act.

7. In 1995-1998, i.e., almost after 2 decades from the date of the order of the Tribunal (21.08.1976), another litigation began between the appellant and the respondents in relation to the suit land. This was under the provisions of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short, "the Act of 1971 ") wherein the issue was whose name - the appellant or the respondents be entered in the Pass Book in relation to the suit land as Pattadar. This litigation ended in appellant's favour by the orders of the revisionary Court.

8. On 29.10.1998, i.e., almost after 22 years from the date of the Tribunal’s order (21.08.1976) the appellant filed a civil suit (O.S.No. 98/1998) against the respondents before the Additional Senior Civil Judge, Narsaraopet out of which this appeal arises. The suit was for permanent injunction in relation to the suit land against the respondents. It was essentially founded on the allegations that the appellant is the owner of the suit land to the exclusion of all persons including the respondents, who have no right to interfere in the appellant's possession over the suit land. It was averred that the appellant has been and continues to remain in possession of the suit land and since the respondents are threatening the appellant to dispossess him from the suit land, hence he was constrained to file the civil suit seeking permanent injunction against the respondents restraining them from interfering in appellant’s peaceful possession over the suit land.

9. The respondents filed written statement. They denied the appellant's claim and set up a title in themselves over the suit land. It was contended that the respondents purchased the suit land from the appellant vide sale deed dated 16.07.1975 and since then they have been in its possession. It was contended that the respondents on purchase of the suit land obtained the loan from S.B.I and mortgaged it with the Bank by way of security for the loan taken. It was also contended that the appellant is estopped from raising any contention once he sold the suit land to the respondents and stake any claim over the suit land.

10. The Trial Court, on the basis of pleadings, framed two issues viz., (1) whether the plaintiff (appellant) is in lawful possession of the suit land; and (2) whether the plaintiff (appellant) is entitled for injunction as prayed for?

11. The Trial Court vide judgment/decree dated 22.09.2003 decreed the plaintiff's suit. It was held that the sale made by the appellant to the respondent of the suit land vide sale deed dated 16.07.1975 (Ex-B-1) is null and void being in contravention of Section 17 of the Act. It was held that such sale, even if made, did not convey any right, title and interest in respondents' favour. It was further held that the plaintiff is in lawful possession of the suit land as he was able to prove his actual possession on the basis of evidence adduced by him and hence was entitled to seek permanent injunction against the respondents restraining the respondents not to dispossess the appellant from the suit land.

12. Felt aggrieved, the defendants (respondents) filed first appeal before the High Court. By impugned judgment and order, the Single Judge of the High Court allowed the appeal and while setting aside the judgment/decree of the Trial Court dismissed the suit. The plaintiff (respondent before the High Court) then orally prayed to the Single Judge to grant leave to file appeal to this Court (Supreme Court) as provided under Article 134-A(b) of the Constitution. The Single Judge granted "leave" to the plaintiff as prayed. This is how this appeal is brought before this Court on the strength of the certificate granted by the High Court.

13. Heard Mr. V.V.S.Rao, learned senior counsel for the appellant and Mr. B. Adinarayana Rao, learned senior counsel for the respondents. We also perused the written submissions filed by the parties.

14. Learned senior counsel for the appellant (plaintiff), while assailing the legality and correctness of the impugned judgment, contended that the High Court (Single Judge) erred in reversing the judgment/decree passed by the Trial Court. The submission of the learned counsel, in substance, was that the judgment of the Trial Court, which had rightly decreed the appellant's suit, should be restored. It is this submission, which learned counsel elaborated by pointing out various provisions of the two Acts and the exhibits and findings of the two courts below.

15. In reply, learned senior counsel for the respondents supported the impugned judgment and contended that no case is made out to interfere in the impugned order and hence appeal deserves to be dismissed.

16. Before we consider the merits of the case, it is apposite to deal with one question which though arises, was not argued by pointing out the relevant provisions governing the question.

17. As mentioned above, this appeal is filed on a certificate granted by the High Court (Single Judge) on the oral application made by the appellant immediately after the pronouncement of the impugned judgment as provided under Article 134-A of the Constitution. The order granting certificate is a part of the impugned judgment in its concluding Para which reads thus:

"Learned counsel for the respondent seeks leave of this Court to prefer an appeal against this judgment."

18. What is the true interpretation of Articles 133 and 134-A of the Constitution and who can grant the certificate of fitness to appeal to the Supreme Court remains no more res integra. It is settled by the decision of this Court in *State Bank of India & Anr. Vs. S.B.I. Employees' Union & Anr*[1].,.

19. The facts of this case and the one involved in the SBI case (supra) are somewhat similar wherein Their Lordships examined the issue as to whether the certificate granted by the High Court (Single Judge) satisfied the requirements contained in Articles 133 and 134-A. Justice Venkataramiah (as His Lordship then was and later became CJI) speaking for the Bench held thus:

"2. The certificate contemplated under Article 134-A of the Constitution can only be a certificate which is referred to in clause (1) of Article 132 or in clause (1) of Article 133 or in sub-clause (c) of clause (1) of Article 134 of the Constitution. This is quite obvious from the language of Article 134-A of the Constitution. This case does not fall either under Article 132(1) or under sub-clause (c) of Article 134(1) as it neither involves a substantial question of law as to the interpretation of the Constitution nor it is a criminal proceeding. It can only fall, if at all, under Article 133(1) of the Constitution. Article 133 of the Constitution reads thus: "133. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134-A– (a) that the case involves a substantial question of law of general importance; an (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in Article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one judge of a High Court."

3. Clause (3) of Article 133 says that notwithstanding anything in that article no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one judge of the High Court. Before the introduction of Article 134-A of the Constitution by the Forty-fourth Amendment of the Constitution there was no express provision in Articles 132, 133 and 134 of the Constitution regarding the time and manner in which an application for a certificate under any of those articles could be made before the High Court. There was also a

doubt as to the power of the High Court to issue a certificate suo motu under any of those articles. Article 134-A was enacted to make good the said deficiencies. Article 134-A does not constitute an independent provision under which a certificate can be issued. It is ancillary to Article 132(1), Article 133(1) and Article 134(1)(c) of the Constitution. That is the reason for the use of words "if the High Court certifies under Article 134-A" in Article 132(1) and Article 133(1) and for the use of the words certifies under Article 134-A in Article 134(1)(c). The High Court can issue a certificate only when it is satisfied that the conditions in Article 132 or Article 133 or Article 134 of the Constitution as the case may be are satisfied. In the instant case such a certificate could not have been issued by reason of clause (3) of Article 133 of the Constitution by the learned Single Judge.

4. The fact that in a similar case a certificate had been issued by a Division Bench of the High Court consisting of two judges in a case decided by the Division Bench did not empower the Single Judge to issue the certificate under Article 133(1) of the Constitution in a case decided by him. The restriction placed by clause (3) of Article 133 of the Constitution could not be got over by relying upon the order of the Division Bench.

5. We, therefore, revoke the certificate. This petition of appeal may, however, be treated as a special leave petition under Article 136 of the Constitution and posted for preliminary hearing."

20. In our considered opinion, the law laid down in S.B.I case (supra) would squarely apply to the case at hand because in the instant case also, the impugned judgment and the certificate of fitness to file an appeal was passed by the Single Judge of the High Court.

21. As held in S.B.I. case, such certificate/leave could not have been issued/granted by the Single Judge by reason of clause (3) of Article 133 of the Constitution. In other words, the Single Judge of the High Court had no jurisdiction to grant certificate in the light of restrictions contained in clause (3) of Article 133 of the Constitution.

22. We, therefore, revoke the certificate granted by the Single Judge of the High Court. However, this appeal is treated as a special leave petition under Article 136 of the Constitution as was done by this Court in S.B.I case (supra). Leave is accordingly granted.

23. Coming now to the merits of the case, the short question, which arises for consideration in this appeal and which was also debated before the two Courts below, is who was in possession of the suit land- the appellant or the respondents on the date of filing of the suit and whether the appellant (plaintiff) was entitled to claim permanent injunction against the respondents(defendants) in relation to the suit land.

24. The Trial Court held the appellant (plaintiff) to be in possession of the suit land and accordingly granted permanent injunction restraining the respondents (defendants) from

interfering in the appellant's possession over the suit land whereas the High Court in an appeal filed by the respondents reversed the finding of the Trial Court and dismissed the suit giving rise to filing of this appeal by the plaintiff on certificate.

25. One cannot dispute the legal proposition being well settled that the question as to who is in possession of the suit property is essentially a question of fact. Such question is required to be decided on appreciation of evidence adduced by the parties in support of their respective contentions. Once the Trial Court renders a finding either way and the same is then appreciated by the first appellate Court in exercise of its appellate jurisdiction, such finding is usually held binding on the second appellate Court and this Court.

26. It is only when such finding of fact is found to be against the pleading or evidence or any provision of law or when it is found to be so perverse or/and arbitrary to the extent that no judicial person of an average capacity can ever record, the same would not be binding on the higher Courts and may in appropriate case call for interference.

27. Coming to the facts of the case, we are of the considered opinion, that the appellant (plaintiff) simply abused the process of law in filing the suit for permanent injunction in relation to the suit land against the respondents. The suit, in our opinion, was misconceived and deserved dismissal on facts and in law on the grounds, which are indeed apparent on the face of the record of the case as mentioned below.

28. Firstly, the legal effect of the coming into force of the Act was that on and after 01.01.1975 (notified date), the appellant being the holder of agriculture lands had no right to sell or/and transfer the suit land whether for consideration or otherwise. In other words, the sale/transfer of agriculture land by the holder of the land was prohibited on and after - 01.01.1975 by virtue of the provisions of the Act. In this view of the matter, the sale made by the appellant vide sale deed dated 16.07.1975 in favour of the respondents in relation to the suit land was null and void.

29. Secondly, the Tribunal having rightly held in the order dated 21.08.1976 that the sale deed dated 16.07.1975 executed by the appellant in favour of the respondents was null and void because it was made in contravention of the provisions of the Act and secondly, having held that the appellant's total holding was in excess of the ceiling limits prescribed in the Act, the suit land was not available to the appellant for its disposal. Indeed its disposal could be done only in accordance with the provisions of the Act with the intervention of the State.

30. That apart, one of the legal effects that ensued consequent upon passing of the order by the Tribunal dated 21.08.1976 was that the character of the suit land had changed. It was then in the nature of "surrendered" or "deemed surrendered" land in favour of the State as prescribed under Sections 10 and 11 and other related provisions of the Act.

31. Thirdly, the litigation, which had ensued during 1995-98 between the appellant and the respondents under "The Act of 1971" in relation to the entries of their names in the revenue record (Pass Book) pertaining to the suit land was neither of any consequence and nor was of

any significance and nor had any impact on the present litigation. It was for the reason that Section 28 of the Act that gives overriding effect to the provisions of the Act on all those laws, which are inconsistent with the provisions of the Act, had applied to this case. The Act of 1971 is one such law and, therefore, any order passed under the Act of 1971 in relation to the suit land was of no avail to any party and nor it could have been made basis for determining the issue of possession of any party over the suit land while considering the grant of injunction.

32. In other words, no benefit of the order(s), even if passed, under the Act 1971 could be taken by the parties either way against each other in these proceedings by virtue of Section 28 of the Act. Moreover, in our considered view, no proceedings under the Act 1971 could either be initiated or be pursued by the appellant/respondents in relation to the suit land after the Act had come into force (01.01.1975). Even the proceedings under the Act of 1971 were subject to the final outcome of the proceedings under the Act.

33. Fourthly, the appellant did not come to the Civil Court with clean hands inasmuch as he suppressed the material fact that he had already sold the suit land much prior to filing of the Suit to the respondents and, therefore, had no subsisting interest in the suit land. Indeed filing of the civil suit by the appellant (29.10.1998) almost after 22 years from the date of passing of the order by the Tribunal (21.08.1976) was totally uncalled for. In fact, it was a collusive suit filed to frustrate the rights of the State which had accrued in State’s favour in the suit land by virtue of the order dated 21.08.1976 read with the provisions of the Act. Such frivolous suit, in our considered opinion, deserved rejection at its threshold.

34. Fifthly, the Trial Court and the High Court having held on the strength of Tribunal's finding recorded in the order 21.08.1976 which has attained finality that the appellant was not the owner of the suit land, the respondents too did not acquire any right, title and interest in the suit land through sale deed dated 16.07.1975. It being a settled principle of law that a person can transfer only those rights, which he has in the property and cannot transfer any rights, which he does not have would apply to this case.

35. In other words, when the appellant was prohibited to transfer any of his rights, title and interest in the suit land by virtue of the provisions of the Act to any person - a fortiori, the respondents too could not acquire any rights, title and interest in the suit land through sale deed dated 16.07.1975 from the appellant and he too was, therefore, in the same position like that of the appellant.

36. Seventhly, once the appellant's rights in the suit land stood determined by the Tribunal vide its order dated 21.08.1976 under the Act, there did not arise any occasion to hold the appellant to be in “lawful possession" of the suit land on the date of filing of the suit (29.10.98) for considering grant of injunction over the suit land against the respondents.

37. It is a settled principle of law that in order to claim prohibitory (temporary or permanent) injunction, it is necessary for the plaintiff to prima facie prove apart from establishing other

two ingredients, namely, irreparable loss and injury that his possession over the suit land is "legal". In this case, it was not so and nor it could be for the simple reason that as far back on 21.08.1976, the Tribunal had already declared the land held by the plaintiff to be in excess of the ceiling limits prescribed under the Act. In these circumstances, the plaintiff was neither holding the land nor could he be held to be in its lawful possession so as to enable him to exercise any ownership rights against any other private party over the suit land. The appellant had then very limited rights left to exercise under the Act in relation to the suit land and such rights were available to him only against the State. Such is not the case here.

38. Lastly, this being a simple suit for grant of permanent injunction between the two private parties in relation to the land which was subject matter of the State Ceiling Laws, was liable to be dismissed on the short ground apart from many others as detailed above that any order that may be passed by the Civil Court would adversely affect and interfere in the rights of the State under the Act, which had not been impleaded as party defendant.

39. Learned counsel for the appellant took us to the various documents including orders of the Revenue authorities to show that it was the plaintiff who was in possession of the suit land on the date of filing of the suit as was rightly held by the Trial Court and, therefore, this Court should restore the finding of the Trial Court.

40. We are afraid we cannot re-appreciate the documentary or/and oral evidence again in our appellate jurisdiction. Firstly, it is not permissible for want of any case made out to that effect and secondly, it is not considered necessary in the light of what we have held above.

41. Learned counsel for the appellant placed reliance on several decisions in support of his submission such as *Nagubai Ammal & Ors. vs. B. Shama Rao & Ors*[2]*., Bhagwati Prasad vs. Shri Chandramaul*[3]*, Pinninti Kishtamma & Ors. vs. Duvvada Parasuram Chowdary & Ors*[4]*., State of Tamil Nadu vs. Ramalinga Samigal Madam*[5]*, Annamreddi Bodayya & Anr. vs. Lokanarapu Ramaswamy(Dead) by L.Rs*[6]*., Anathula Sudhakar vs. P. Buchi Reddy(D) by L.Rs*[7]*., Rajendra Singh & Ors. vs. State of U.P. & Ors.*[8]*, and Karnail Singh vs. State of Haryana & Anr.*[9], We have perused these decisions and find no quarrel with the general proposition of law laid down therein. In our view, all the decisions cited are distinguishable on facts and hence have no application to the facts of this case.

42. It is pertinent to mention that in order to limit filing of such frivolous suits by the private parties in relation to agricultural land which are subjected to the State ceiling laws, the State of M.P. amended the Code of Civil Procedure by Act No. 29 of 1984 w.e.f. 14.8.84. By this State amendment, Rule 3-B was added in Order 1 Rule 10 making it obligatory upon the plaintiff to implead the State as party defendant along with private party defendant in every such suit. The amendment further provides that so long as the plaintiff does not implead the State as party defendant in the suit, the Court will not proceed with the trial of the Suit. The object behind introducing such amendment was to give notice to the State of filing of such suit by the holder of the agricultural land which would enable the State to defend their rights, which had accrued in State's favour in the land under the Act.

43. In the absence of any such rule in operation in the State of A.P., the State remained unnoticed of the suit proceedings, which continued in Courts for last more than two decades.

44. In view of foregoing discussion, we uphold the conclusion arrived at by the High Court on our reasoning given supra. As a consequence, the appeal fails and is accordingly dismissed.

45. Before parting, we consider it apposite to state that the appellant and the respondents made frantic efforts to somehow retain the suit land to them and keep the land away from the clutches of The Act. With this aim in view, they got the suit land involved in this litigation since 1976. All this was done without notice to the State Authorities.

46. We, therefore, direct the Tribunal to take up the case of the appellant on its Board and pass appropriate consequential order, if necessary under the Act keeping in view the order dated 21.08.1976 of the Tribunal passed in CC No. 2311/VKD/75 and take all remedial steps as are necessary in relation to the land held by the appellant including the suit land.

47. Registry is directed to send a copy of this order to the concerned Tribunal.

Judgment Referred.

[1]*(1987) 4 SCC 0370*
[2]*AIR 1956 SC 0593*
[3]*AIR 1966 SC 0735*
[4]*(2010) 2 SCC 0452*
[5]*(1985) 4 SCC 0010*
[6]*(1984) Suppl SCC 0391*
[7]*(2008) 4 SCC 0594*
[8]*(1998) 7 SCC 0654*
[9]*(1995) Suppl. 3 SCC 0376*