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**(2004) 08 AP CK 0008**

**Andhra Pradesh High Court**

**Case No:** Second Appeal No. 649 of 2001

Achamulla Ramappa and Others

APPELLANT

Vs

Yellamma and Others

RESPONDENT

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**Date of Decision:** Aug. 26, 2004

**Acts Referred:**

- Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 - Section 38E

**Citation:** (2005) 2 ALD 835 : (2005) 2 ALT 540

**Hon'ble Judges:** L. Narasimha Reddy, J

**Bench:** Single Bench

**Advocate:** N. Ashok Kumar, for the Appellant; K. Venkatesh Gupta, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

L. Narasimha Reddy, J.

These four second appeals arise under similar set of facts. Though the appellants in each second appeal are different, the respondents are common to them. Hence, they are disposed of through a common judgment.

2. The facts, that led to the filing of second appeals, may briefly be stated as under:

The agricultural lands in survey Nos. 233, 234 and 235 of Appireddypally, Maddur Mandal, Mahabubnagar District, were owned by one Bheemamma. Konda Laxmappa, father of the first respondent in all the second appeals, was recorded as the protected tenant in respect of the said lands. He was also issued ownership certificate u/s 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agriculture Lands Act, 1950, through proceedings dated 27-12-1983. The appellants claim to have purchased different extents of land in these survey numbers from late Konda Laxmappa, through different sale deeds dt. 27-12-1983. According to them, they were dispossessed by the respondents herein, on the basis of an ex parte temporary injunction obtained by them in O.S. No. 13 of 1984 on the file of Junior Civil Judge,

Kodangal.

3. Appellants filed O.S. Nos. 18, 21, 22 and 23 of 1990 in the Court of Junior Civil Judge, Kodangal, for the relief of declaration of title and recovery of possession, in relation to the lands said to have been purchased by them from Konda Laxmappa under sale deeds dated 27-12-1983. Respondents 1 to 4 are the defendants in all the suits. The first respondent-the daughter, respondents 2 and 3, are brothers and respondent 4 is the adopted son of late Konda Laxmappa. They pleaded that though Konda Laxmappa alone was recorded as the protected tenant, and the ownership certificate was issued in his name, the land was held by the joint family, and as such, he did not possess the exclusive right to alienate the same. They also pleaded that during his lifetime, Konda Laxmappa, together with the first respondent, filed O.S. No. 42 of 1981 for perpetual injunction against respondents 2 and 3 and the possession of the latter was upheld. They contended that their title in respect of the land was recognised in O.S. No. 13 of 1984, to which, all the appellants herein are parties. The trial Court dismissed the suits, holding that the appellants are not entitled to seek declaration of their title and thereby the relief of recovery of possession was also rejected. The appellants filed appeals before the Court of Senior Civil Judge, Narayanpet. The appeals were also dismissed through separate judgments dated 29-11-2002. Hence, these second appeals.

4. Sri N. Ashok Kumar, learned counsel for the appellants, submits that the Courts below were not at all justified in refusing to adjudicate upon the title in respect of the suit schedule properties, on the sole ground that the appellants have not filed the suit immediately after their being dispossessed. He submits that they committed error in proceeding on the footing that there was a declaration of title in favour of the respondents in the decree passed in O.S. No. 13 of 1984. He contends that the possession of title to an immovable property has to be decided on the strength of the relevant documents and the right of the person, who conveyed the title and that it cannot be denied on certain facts, which are extraneous to the issues.

5. Sri Venkatesh Gupta, learned counsel for the respondents, on the other hand, submits that though the appellants were parties to O.S. No. 13 of 1984, they have not even referred to the sale deeds, through which, they are said to have purchased the properties. He contends that even though O.S. No. 13 of 1984 was filed for the relief of perpetual injunction, the title in respect of the land, did fall for consideration and the trial Court was satisfied that such a title existed with the respondents.

6. In the suits filed by the appellants herein, the trial Court framed similar issues in all the suits. The relevant issues read as under:

(1) Whether the plaintiff is the owner of the suit lands having purchased the same from Konda Laxmappa by registered sale deed dt.27-12-1983 for consideration of Rs. 4,000/-?

(2) Whether the defendant Nos. 2 to 4 are in illegal possession of the suit lands?

(3) Whether the plaintiff is entitled to get mesne profits, if so, at what rate per year?

7. The evidence was also almost similar in all the suits. The appellants and other witnesses deposed on their behalf as P.Ws. and on behalf of the respondents, D.Ws.1 to 4 were examined. The documentary evidence in the form of Exs.A-1 to A-9 and B-1 to B-6, was also adduced. The trial Court refused to decide the question of title in answer to issue No. 1, on the sole ground, that there is no explanation from the appellants, as to why they failed to seek the relief immediately after being dispossessed from the suit land by respondent Nos. 2 to 4 herein, during the life time of Konda Laxmappa and kept quiet for six years. The relevant portion reads as under:

"There is no explanation from the plaintiff as to why he failed to seek relief immediately after his dispossession from the suit land by the defendant Nos. 2 to 4 and during the life time of the alleged vendor Konda Laxmappa and kept quiet for about six years, which creates doubt in the mind of the Court about the alleged sale of suit land from the alleged vendor, late Konda Laxmappa."

Except this, the trial Court did not state any other ground in rejecting the relief of declaration of title.

8. The lower appellate Court did nothing more, than approving the view taken by the trial Court. If at all any thing, it has only added one more reason, which is to the effect that the appellants herein did not take steps to get the sale deeds implemented in the revenue records.

9. In a suit for declaration, the Court is required to undertake an examination of the case presented by the plaintiff. The question as to whether the plaintiff in a suit possesses a title depends on several facts. If the declaration is sought on the basis of any law of succession, the status of the party vis-a-vis defendants and his entitlement under the relevant personal law has to be examined. On the other hand, if the declaration is sought on the basis of transfer, the Court is under obligation to see (a) whether the transferor possessed the right and title to transfer the property; and (b) whether there is a valid document conveying the property? The declaration of title claimed by the appellant herein is on the basis of transfer through the respective sale deeds dated 27-12-1983. There was no serious dispute about the genuinity of the sale deeds. There was no plea of adverse possession. The simplest thing for the trial Court ought to have been, to see, whether the transferor possessed the requisite right and title. Unfortunately, the trial Court did every thing, except this. The reasons stated by it that the appellants were dispossessed six years prior to the filing of the suit and that they have not taken any steps to get declaration or recovery of possession are absolutely out of context and irrelevant for the purpose of declaration of title. On this ground alone, the judgments of the Courts below are liable to be set aside. Further, any observation made in a suit for

perpetual injunction, in relation to title cannot be treated as a final pronouncement upon it. O.S. No. 13 of 1984 was filed admittedly for the relief of perpetual injunction. No observation made therein, would have a bearing on title. The suits need to be decided afresh. This Court does not intend to discuss the matter further, lest it shadows the adjudication by the trial Court, after remand.

10. Hence, the second appeals are allowed and the judgments and decrees of the trial Court in the respective suits and those of the appellate Court in the respective appeals, are set aside. The matters are remanded to the trial Court for fresh adjudication and disposal in accordance with law. It shall be open to the parties to adduce any further evidence or to get additional issues framed in accordance with law. The trial Court shall endeavour to dispose of the suits within a period of one year from the date of receipt of the records.