Thota Kistaiah Vs Nikode Bheemera

Court: Andhra Pradesh High Court

Date of Decision: June 14, 2002

Acts Referred: Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 â€" Section 93, 99
Civil Procedure Code, 1908 (CPC) â€" Section 100
Hyderabad Tenancy and Agricultural Lands Act, 1950 â€" Section 102

Citation: (2002) 5 ALT 745

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: R. Subhash Reddy, for the Appellant; Y.N. Lohita, for the Respondent

Final Decision: Dismissed

Judgement

P.S. Narayana, J.
The unsuccessful defendant in both the Courts is the appellant herein. The respondent-plaintiff filed a suit for declaration

of title relating to the plaint schedule property admeasuring Ac.11.78 cents in Sy.No. 102 of Khairgaon village and for other consequential reliefs.

The respondent-plaintiff filed O.S.No. 14 of 1982 on the file of the District Munsif, Asifabad for the reliefs referred to supra on the ground that the

respondent-plaintiff is the owner and has been in possession of the said property and being in possession of the said property for more than 12

years, the respondent-plaintiff also had perfected his title by adverse possession and in view of the threats posed by the appellant-defendant to

take possession of the property, the said suit was instituted. The appellant-defendant had taken a specific stand that he has been in possession and

enjoyment of the entire extent of the land in Sy.No. 102 measuring Ac.17.13 cents and, in fact, he never threatened the respondent-plaintiff and he

had been put in possession by the authorities as per law. It was further pleaded in the written statement that his father was a protected tenant of the

suit land and after his death he continues to be the protected tenant of the suit land and the Tahasildar, Asifabad, passed eviction orders on 5-5-

1982 and by virtue of the said order the suit land was delivered to him by the Revenue Inspector. It was also pleaded that the suit land is an Inam

land. On the strength of the respective pleadings of the parties, certain issues and additional issues had been settled, which are as hereunder:

(1) Whether the plaintiff is the owner and possessor of the suit lands?

(2) Whether the plaintiff is entitled for permanent injunction as prayed for?

(3) To what relief?

Additional Issues:

(1) Whether this Court has got jurisdiction to entertain the suit u/s 99 of the Tenancy Act?

(2) Whether the plaintiff is entitled for recovery of possession of the suit land?

2. The learned District Munsif, Asifabad, after recording the evidence of P.W.1 to P.W.3, D.W.1 to D.W.3 and marking Exs. A-1 to A-17 and

Exs. B-1 to B-11 and on appreciation of both oral and documentary evidence had arrived at a conclusion that the respondent-plaintiff is entitled to

the decree as prayed for. Aggrieved by the same, the appellant-defendant filed A.S.No. 10 of 1985 on the file of the Subordinate Judge,

Asifabad, and the learned Judge after appreciating all the facts and circumstances confirmed the judgment of the Court of first instance. Aggrieved

by the same, the present second appeal is filed by the unsuccessful appellant-defendant.

3. Sri Sreedhar Reddy, the learned counsel representing the appellant had drawn my attention to the substantial questions of law framed as ground

Nos. 2, 3, 4, 5 and 6 in the second appeal and the said questions are as follows:

(1) Whether the suit filed by the respondent-plaintiff for declaration of ownership and for recovery of possession of the suit schedule property is

maintainable in view of the bar created u/s 99, of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950?

(2) Whether mere entries in revenue records confer title of the suit schedule property in the absence of any other material to substantiate the plea

for title?

(3) The Courts below ought to have seen that inasmuch as the orders passed under Tenancy Act have become final, the respondent cannot be

allowed to agitate the said plea before the Civil Court.

(4) The Courts below erred in drawing the theory of adverse possession in favour of the respondent-plaintiff for the suit schedule property, which

is covered by Tenancy Act.

(5) The Courts below ought to have seen that as the appellant is the protected tenant and as he was dispossessed as otherwise than in due process

of law, he is deemed to be the tenant for all purposes and he was rightly inducted into possession of the suit schedule "" property.

4. Having pointed out the said questions, the learned counsel with all vehemence had contended that the respondent-plaintiff had not produced any

document to establish the title and the mere entries in revenue records will not confer title. The learned counsel had also further maintained that in a

case of this nature, the plea of adverse possession is not available and hence the Courts below totally erred in granting declaration of title on the

strength of mere revenue entries and on the ground that the respondent-plaintiff has been in possession of the property for sufficiently long time.

The learned counsel had also placed reliance on the Full Bench decision of this Court reported in Sada v. Tahasildar Utnoor 1987 (2) ALT 749 .

The learned counsel also had pointed out that no doubt there is an admission in the written statement that the land is an Inam land, but it will not

amount to an admission that it is service Inam land and unless there is material to show that the land is service Inam land, there is no question of

holding that the Civil Court has jurisdiction. The learned counsel further maintained that in the light of the facts and circumstances inasmuch as the

revenue authorities are competent to deal with a question of this nature, the Civil Court has no jurisdiction and the findings recorded by both the

Courts below are not legally sustainable and hence the appeal has to be allowed.

5. Sri Prasad, the learned counsel representing the respondent-plaintiff, on the other hand, had contended that in view of the limitations imposed by

Section 100 of the CPC normally where concurrent findings had been recorded by both the Courts below such findings shall not be disturbed in a

second appeal. The learned counsel further would maintain that as far as the nature of the land is concerned, there is an admission in the pleading

itself that it is an Inam land and Inam land can be in relation to a person or an institution and here is a case which was granted in favour of service

and hence necessarily a finding had been recorded that it is a service Inam land and hence the Civil Court has jurisdiction in view of the provisions

of Section 102 (c) of the Hyderabad Tenancy and Agricultural Lands Act (hereinafter referred to as ''the Act'' for the purpose of convenience).

The learned counsel also had drawn my attention to the continuous revenue records and had contended that this shows that the case of the

respondent-plaintiff is believable and in view of the long uninterrupted possession even on the strength of long possession, the title can be declared

and even otherwise it being a finding of fact recorded by both the Courts below such finding need not be disturbed. The learned counsel also had

drawn my attention to a decision reported in Lingaiah v. Muneerunnissa Begum, 1963 (1) An.W.R. 60 relating to the jurisdiction of the Civil

Court.

6. Heard both the learned counsel and also perused the material available on record and the judgments of both the Courts below.

7. It is needless to re-emphasize the limitations imposed on this Court while deciding a second appeal u/s 100 of the Code of Civil Procedure. It is

a case where the appellant-defendant was unsuccessful in both the Courts below and concurrent findings had been recorded. As can be seen from

the questions of law which had been pointed out by the learned counsel for the appellant, the important and substantial questions of law which arise

for consideration in the second appeal are as follows:

(a) Whether the Civil Court has jurisdiction to entertain the suit at all in view of the bar created u/s 99 of the A.P. (Telangana Area) Tenancy and

Agricultural Lands Act, 1950?

(b) Whether the suit for declaration of title and for consequential reliefs can be granted merely on the strength of entries in revenue records?

(c) Whether the declaration of title on the plea of prescription of title by adverse possession can be sustained in the facts and circumstances of the

case?

8. The facts of the case are plain and simple and had been narrated already. It is not in dispute that the suit land is an Inam land. But, however, the

serious contention raised by the learned counsel for the appellant is to the effect that the mere fact that there is an admission that it is an Inam land

will not amount to an admission that it is a service Inam land and there is no material in this regard. A finding had been recorded by both the courts

below regarding this aspect. As per Exs. A-1, A-2, A-10 to A-13 in column No. 11 the name of the pattadar is shown as Vaidya Kasinatham and

in column Nos. 1 and 2 it was shown as Inam patta and whenever an Inam was granted in favour of a particular person it may be either for doing

service to the Government or to the institution or it may be a case in favour of an institution as such and hence in view of the facts and

circumstances, the Courts below had arrived at conclusion that this Kairathi Inam also is a service Inam land and hence the suit schedule property

is a service Inam land. Section 99 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 deals with bar of jurisdiction, which

reads as follows:

(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided

or deal with by the Tahsildar, Tribunal or Collector or by the Board of Revenue or Government..

(2) No order of the Tahsildar or Collector or of the Board of Revenue or Government made under this Act, shall be questioned in any Civil or

Criminal Court.

9. Likewise, Section 102 (c) of the said Act specifically says that nothing in this Act shall apply to service Inam lands. In Lingaiah''s case (2 supra)

while deciding the jurisdiction of the Tahasildar under the Act and also the jurisdiction of the Civil Court, it was held that under the provisions of

Section 102 (c) of the Hyderabad Tenancy Act, the service inam lands have been excluded from the purview of the Act and, therefore, protected

tenancy certificate cannot be issued to tenants of service inam lands. It was further held that Section 99 of the Act, which excludes the jurisdiction

of the civil court in matters, which, under the provisions of the Act, are within the exclusive competence of the Revenue authorities, has no

application and the jurisdiction of the Civil Court is not ousted. Hence, in the light of the above legal position, it cannot be said that the findings

recorded by both the courts below in this regard are not sustainable and accordingly, the said findings are hereby affirmed.

10. It was also no doubt further seriously contended that the relief of declaration of title cannot be, however, granted on the strength of mere

revenue entries. But, here is a case where the long uninterrupted possession had been taken into consideration and the courts below have arrived

at a conclusion that the civil court has jurisdiction and on the strength of such long uninterrupted possession, came to the conclusion that the title of

the respondent-plaintiff has to be declared inasmuch as this finding had been recorded on appreciation of both oral and documentary evidence

adduced by both the parties. I do not see any compelling reasons to take different view in this regard.

11. In Sada''s case (1 supra) on which strong reliance was placed, no doubt it was held that there is no provision in the Act dealing with adverse

possession and the only provision dealing with ''limitations'' is the one contained u/s 93 of the Act which initially stated (before the Amendment by

Act 2/79) that every appeal or application for revision should be filed within 60 days of the order against which the appeal or revision is filed, and

that the provisions of the Indian Limitation Act, 1908 applied only for the purposes of computation of the said period. However, this decision has

no application in view of the fact that I had arrived at a conclusion that the Civil Court has jurisdiction to entertain the suit in view of the specific

provision u/s 102 (c) of the Act. Viewed from any angle, inasmuch as both the courts below on appreciation of both oral and documentary

evidence P.W.1 to P.W. 3, D.W.1 to D.W.3 and Exs.A-1 to A-17 and Ex.B-1 to B-11 had recorded the concurrent findings, I do not find any

reason to interfere with the said findings recorded by both the courts below. In the light of the same and inasmuch as no other point had been

raised by the learned counsel for the appellant, I have no hesitation to say that the second appeal is devoid of merits and accordingly the same is

dismissed. But, in the peculiar facts of the case, this court makes no order as to costs.