

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.134 of 2006

Date:21.01.2015

Between:

Yelisetti Ramuloru

.....Appellant.

AND

Donda Rajulamma

.....Respondent.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.134 of 2006

JUDGMENT:

This appeal is preferred against judgment dated 10-03-2005 in A.S.No.23/2002 on the file of Senior Civil Judge, Chodavaram whereunder judgment dated 03-05-2001 in O.S.No.195/1997 on the file of Principal Junior Civil Judge, Chodavaram was reversed.

2. Appellant herein is defendant and respondent herein is

plaintiff in the above referred O.S.No.195/1997 and they are hereinafter referred to as plaintiff and defendant as arrayed in the suit for convenience sake.

3. Suit is filed seeking delivery of possession in respect of plaint 'A' schedule property contending that plaintiff's husband was assigned Acs.05-00 cents of land in Survey No.153 in 1978 and plaintiff was assigned Acs-02-92 cents of land in Survey No.181/2, which are in a single plot with common boundaries shown and described in plaint 'A' schedule. She further contended that when her husband became sick and was unable to cultivate, 'A' schedule land was delivered to defendant with an understanding to share the produce in equal parts, but the defendant contrary to the understanding, started manufacture of I.D. Arrack in plaint 'A' schedule land and after the death of her husband, plaintiff demanded defendant to vacate plaint 'A' schedule land and deliver the land and the defendant got issued a reply with false and frivolous allegations and plaintiff is constrained to file the suit.

4. According to defendant, the suit schedule land was never assigned to the plaintiff's husband and he was never in possession and enjoyment of 'A' schedule land.

The alleged agreement between the plaintiff and defendant was only in respect of Acs.2-92 cents in Survey No.181/2002 and it is not in respect of Acs.5-00 cents covered by Survey No.153. According to defendant, he

planted cashew nut plants and raised horse-gram crop in the land and he is a protected tenant and the Civil Court has no jurisdiction and that the suit is liable to be dismissed.

5. On these allegations, three witnesses are examined and four documents are marked on behalf of plaintiff, whereas one witness is examined and one document is marked on behalf of defendant. On an over all consideration of oral and documentary evidence, trial Court dismissed the suit holding that Civil Court jurisdiction is ousted as per provisions of Act 9 of 1977 and holding so dismissed the suit. Aggrieved by the same, plaintiff preferred appeal and the appellate Judge, on a reappraisal of facts and law, held that Civil Court has got jurisdiction and allowed the appeal and decreed the suit. Aggrieved by which, the present second appeal is preferred.

6. Heard both sides.

7. The main question of law agitated in the second appeal is with regard to Civil Court's jurisdiction.

8. Now the point that would arise for my consideration in this second appeal is whether the Civil Court has got jurisdiction or not?

9. According to defendant, as the plaintiff claims that it is an assigned land, Civil Court jurisdiction is ousted as per Sections 8, 19 & 4 of Andhra Pradesh Assigned Lands

(Prohibition Of Transfers) Act, 1977. On the other hand, it is the contention of the plaintiff that the Civil Court has got jurisdiction as there is no express bar under the provisions of Act 9 of 1977. In fact, the very same point was urged before the lower appellate Court and the appellate Judge, after considering the factual aspects and the legal position as decided by the Hon'ble Supreme Court, held that Civil Court has got jurisdiction. Admittedly, there is no express bar and that the provisions of Act 9 of 1977 ousting the jurisdiction of the Civil Court. As per the provisions of this Act, the District Collector has power to take back possession of the assigned land, if there is any breach of terms as per the assignment. In fact, the objection of the defendant is that he is a protected tenant and the plaintiff has to proceed under the provisions of A.P Tenancy Act, and cannot invoke the jurisdiction of Civil Court. On this aspect also, the appellate Court, on appreciation of facts and evidence held that defendant is only a trespasser and he cannot be termed as tenant. As seen from the evidence, the defendant i.e, appellant herein failed to establish that he was inducted into possession as a tenant and that he paid rent either to plaintiff or to her husband. Here the claim of the plaintiff is mainly on the proceedings issued by the revenue authorities and the defendant has no documentary proof to show that he has got any legal right over the suit schedule property. Where defendant is a trespasser or in permissive possession under Act 9 of 1977, there is no procedure prescribed for eviction such person in a separate forum. As the evidence on record

disclose that defendant encroached into the assigned land, the contention that Civil Court has no jurisdiction cannot be accepted. Only in case of breach or violation of conditions of assignment a procedure is contemplated under the Act 9 of 1977. When there is no express provision for eviction of a trespasser from assigned land, the only remedy is to approach Civil Court and the plaintiff rightly invoked the jurisdiction of the Civil Court. When the defendant has no legal right over the plaint schedule property and the plaintiff being assignee has every right to protect the land and can take necessary action against trespassers.

The appellate Court has elaborately discussed each and every point concerning Civil Court jurisdiction and also provisions of Act 9 of 1977 with reference to legal pronouncements on the subject and came to a right conclusion and I do not find incorrect findings either on facts or on law.

10. For these reasons, I am of the view that there are absolutely no grounds to interfere with the findings of the appellate Court and there is no substantial question of law to be decided by this Court.

11. Accordingly, point is held against the appellant and in the result, appeal is dismissed. No costs.

12. As a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:21.01.2015

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