

\*The Hon'ble Sri Justice C.V. Nagarjuna Reddy

+Appeal Suit No.1085 of 1994

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% 01-05-2015

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#Badde Ganiraju

... Appellant

Vs.

\$Polisetti Andala Tayeru and 3 others.

...Respondents

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<HEAD NOTE:

!Counsel for the appellant: Mr.C.Raghu

^ Counsel for the respondents: Mr.N.V.Suryanarayana Murthy,

Senior Counsel for Mr.Subrahmanyam Kurella

?CASES REFERRED:

1. (1985) 2 SCC 54

2. (2008) 15 SCC 150

3. 1966 ALT Reports 424=1966(1) An.W.R. 352

4. 1993 (2) ALT 283
5. AIR 1966 SC (735) (1)
6. AIR 1971 AP 87 (FB)
7. AIR 1977 SC (1158) (1)
8. AIR 1999 SC (3039) (1)
9. AIR 1966 SC 1718
10. AIR 1988 SC (752)
11. 2009 (3) ALD 104 (SC)
12. 1956 Andhra 209 (AIR V 43 C 59 Nov.)
13. AIR 1971 A.P. 262
14. Civil Appeal No.4245 of 2012, dt.27-2-2015
15. SLP (C) No.18654 of 2008
16. AIR 1982 A.P. 24
17. AIR 2002 S.C. 812

**The Hon'ble Sri Justice C.V. Nagarjuna Reddy**

**Appeal Suit No.1085 of 1994**

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**Date : 01-05-2015**

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**Between:**

Badde Ganiraju

**... Appellant**

**and**

Polisetti Andala Tayar and 3 others.

**...Respondents**

**Counsel for the appellant: Mr.C.Raghu**

**Counsel for the respondents: Mr.N.V.Suryanarayana Murthy,**

**Senior Counsel for Mr.Subrahmanyam Kurella**

**The Court made the following:**

**JUDGMENT:**

This Appeal arises out of the judgment and decree, dated 03-05-1994, in OS.No.87 of 1985 on the file of the Court of the learned Subordinate Judge, Narsapur.

For convenience, the parties shall be hereinafter referred to as arrayed in the suit.

Originally, one Polisetti Satyanarayana Rao, who is the husband of respondent No.1 and father of respondent Nos.2 to 4, filed the above-mentioned suit for delivery of possession of the plaint schedule property comprising Acs.6-00 of land in RS.Nos.68 and 70 of Veeravasaram Village, Podur Taluk, West Godavari District, for recovery of a sum of Rs.50,119-20 ps., towards past profits with subsequent interest from the date of plaint till the date of payment, for future profits at the rate to be determined by the Court from the date of suit till the date of delivery of possession, to appoint a receiver to manage the plaint schedule property during the pendency of the suit

and for costs.

The plaintiff has pleaded that the defendant has taken the suit land on lease; that for Acs.4-00 cents out of the plaint schedule land the maktha (rent) payable was 12 bags per acre for sarva and 10 bags per acre for Dalwa and for the remaining Acs.2-00 cents, the maktha payable was 15 bags per acre for Sarva and 10 bags per acre for Dalwa. The Sarva maktha is payable by 15<sup>th</sup> of January every year and the Dalwa maktha is payable by 15<sup>th</sup> of May every year; that the said land was taken on lease by the defendant in the year 1979; that having entered into possession of the plaint schedule land as a lessee, the defendant has not been paying the maktha in spite of demands made by the plaintiff, and was appropriating the entire produce by himself; that the plaintiff has caused registered notice, dated 26-06-1984 issued on the defendant demanding payment of maktha and that having received the same, the defendant has issued registered notice, dated 11-07-1984, with false and frivolous contentions. In the said reply, the defendant has denied the tenancy and alleged that the plaintiff has entered into an agreement of sale with him in respect of the plaint schedule property at Rs.14,000/- per acre before Polisetti Vasudeva Rao and Polisetti Veera Raghava Rao, who happened to be the brothers of the plaintiff and one Mutyala Ranganayakulu, father-in-law of Polisetti Vasudeva Rao; and that under the said agreement of sale, the defendant has paid a sum of Rs.79,000/- to the said Polisetti Vasudeva Rao towards the sale consideration in installments and obtained his signatures in his account book. The defendant has also called upon the respondent to receive the balance amount and execute the sale deed in his favour. On receipt of the said reply, the plaintiff has got another registered legal notice issued to the defendant on 26-10-1985 by way of a rejoinder, in which the defendant was called upon to hand over possession of the plaint schedule property and pay the profits.

The plaintiff has further averred that the defendant has denied the tenancy and set up the plea of agreement of sale and in pursuance thereof, his right to continue in possession on the alleged agreement

of sale and that therefore, the suit being the one filed for recovery of possession of the plaint schedule property with past and future profits, the plaintiff is entitled to interest on the arrears of maktha from the respective due dates at 12% *p.a.*

The defendant filed a written statement, wherein he has averred that as per the allegations made in the plaint, he is a tenant, which is not admitted by him, and as such, the plaintiff has to avail the remedy before the Tribunal constituted under the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short "the Act"). The defendant further averred that he was never the tenant of the plaintiff; that the suit land was situated in triounial zone; that therefore, Dalwa can be raised only once in three years; and that he has not entered into possession of the suit land as a lessee but as a vendee and therefore, he is entitled to appropriate the produce for himself. The defendant has admitted his receipt of legal notice and his issuing reply notice. The defendant has given the details of his alleged purchase of the plaint schedule property under an agreement of sale, reference to which is not necessary.

Based on the respective pleadings, the lower Court has framed the following issues for consideration:

- “1. Whether this Court has no jurisdiction to entertain and try the suit ?
2. Whether the plaintiff is entitled to any maktha from the defendant ? If so, to what amount ?
3. Whether P.Vasudeva Rao was acting as agent of the plaintiff ?
4. Whether the defendant has made any improvements over the suit property ?
5. Whether the plaint schedule is not correct ?
6. Whether plaintiff is entitled to possession of suit property ?
7. Whether the defendant is entitled to compensatory costs under Section 35 (A) C.P.C. ?

## 8. To what relief ?”

Subsequently, the application filed by the defendant for framing of additional issues was allowed and hence, the following additional issues were framed:

“1. Whether there is any lease between the 1<sup>st</sup> plaintiff and the defendant as pleaded by the plaintiff ?

2. Whether the oral agreement of sale pleaded by the defendant is true ?

3. Whether the defendant is in possession of the plaint schedule property in pursuance of the oral agreement of sale ?

If so, whether the plaintiff is not entitled to the possession of the plaint schedule property ?”

Pending the suit, the sole plaintiff died. Hence, plaintiff Nos.2 to 5 were brought on record as his legal representatives.

On behalf of the plaintiffs, PWs.1 to 3 were examined and Exs.A.1 to A.4 were marked. On behalf of the defendant, DWs.1 to 4 were examined and Exs.B.1 to B.31 were marked.

On Additional Issue No.1, the lower Court held that after careful consideration and after marshalling the evidence of the defendant with that of the evidence of the plaintiffs’ witnesses, it was well established that the defendant was inducted into the land after the Dalwa crop of 1979.

On Additional Issue No.2, on the analysis of the evidence, the lower Court has held that it has no hesitation to hold that the evidence placed by the defendant is not acceptable and that he has failed to prove that there is oral agreement of sale in his favour.

On analysis of the oral and documentary evidence, the lower Court has answered all the issues against the defendant except issue No.5 in respect of which it has held that the same was infructuous. The

lower Court has, accordingly, decreed the suit. Feeling aggrieved by the said judgment and decree, the unsuccessful defendant filed this appeal.

I have heard Mr.C.Raghu, learned Counsel for the defendant/appellant, and Mr.NV.Suryanarayana Murthy, learned Senior Counsel, who appeared for Mr.Subrahmanyam Kurella, learned Counsel for the plaintiffs/respondents, in detail.

Learned Counsel for the defendant has advanced his submissions with regard to Issue No.1 only. He has submitted that the jurisdiction of the Court is required to be determined based on the averments in the plaint alone and that the stand taken by the defendant has no relevance at all. He has further submitted that as the Act has created a Special Forum, the landlord who pleads tenancy, has to necessarily approach the Tribunal constituted under the Act under Section 13 of the Act by filing appropriate application before the Special Officer, if any of the contingencies mentioned in sub-clauses (a) to (f) thereof exists. He has taken this Court through the plaint averments and submitted that as the deceased plaintiff No.1 has specifically pleaded that the defendant was the tenant, the civil Court's jurisdiction is barred notwithstanding the fact that the defendant has denied tenancy.

In support of his submission that, for determination of jurisdiction, the Court can only look into the pleadings in the plaint, the learned Counsel has relied upon the judgments in **Abdulla Bin Ali and others vs. Calappa and others** and **Kurella Naga Dhruva Vudaya Bhaskara Rao vs. Galla Janikamma**. He has also relied upon the judgments in **M.Ramaiah vs. M.Govindu** and **Nimmagadda Venkaiah and others vs. Sri sangameswara Swamy Temple, Sangam Jagarlamudi, rep. by its Chairman, Trust Board and others** in support of his submission that the civil Court has no jurisdiction to entertain the suit for eviction of a tenant by the landlord.

Opposing the above submissions, Mr.N.V.Suryanarayana Murthy, learned Senior Counsel, submitted that the plaint averments have to

be read as a whole; that accordingly, Paragraph No.4 of the plaint, wherein the plaintiff has pleaded tenancy has to be read along with Paragraph No.8, in which he has referred to denial of tenancy by the defendant; that the defendant has categorically denied tenancy in Paragraph No.4 of his written statement, which is also material for determining the forum. The learned Senior Counsel has placed heavy reliance on the judgments in **Bhagwati Prasad vs. Chandramaul, Dontireddy Venkata Reddy vs. Bhimavarapu Bhushireddy and others, Smt.Manjushri Raha and others vs. B.L.Gupta and others and Syed Dastagir vs. T.R.Gopalakrishna Setty** in support of his submission that the lower Court had jurisdiction to entertain the suit and pass decree.

The learned Senior Counsel has also submitted that a statute, which ousts the jurisdiction has to be strictly construed. In support of this submission, he has relied upon the judgment in **Abdul Waheed Khan vs. Bhawani and others** .

The learned Senior Counsel further submitted that a judgment can be interfered, if it is wrong, but not, if it is not right. In this regard, he has relied upon the judgment in **Raja Ram Kumar Bhargava (dead) by LRs. vs. Union of India**. He has further submitted that the civil court's jurisdiction has to be ordinarily presumed and for this purpose, he has relied upon the judgment in **Rajasthan State Road Transport Corporation and another vs. Bal Mukund Bairwa**.

The learned Senior Counsel submitted that no equities lie in favour of the defendant for the reason that he is setting up an oral agreement of sale, which by itself would not give him any right to continue in possession without obtaining a decree for specific performance of an agreement of sale and that in case of an oral agreement of sale, his possession is not protected by Section 53-A of the Transfer of Property Act, 1882. In support of his submission, he has relied upon the judgment in **Narasayya and others vs. Ramachandrayya and others**.

I have carefully considered the respective submissions of the learned counsel for the parties and perused the record.

The long title of the Andhra Pradesh (Andhra Area) Tenancy Act 1956 would reveal that the same was enacted to provide for payment of fair rent by cultivating tenants and for regulating the relations of landlords and cultivating tenants of agricultural lands and for matters connected therewith in the Andhra Area of the erstwhile State of Andhra Pradesh.

Section 13 of the Act reads :

**Termination of Tenancy:** Notwithstanding anything contained in Sections 10, 11 and 12, no landlord shall be entitled to terminate the tenancy and evict his cultivating tenant except by an application made in that behalf to the Special Officer and unless such cultivating tenant:

- a. has failed to pay the rent due by him within a period of one month from the date stipulated in the lease deed, or in the absence of such stipulation, within a period of one month from the date on which the rent is due according to the usage of the locality; and in case the rent is payable in the form of a share in the produce, has failed to deliver the produce at the time of harvest; or
- b. has done any act or has been guilty of any neglect, which is destructive of, or permanently injurious to the land; or
- c. has sub-let the land; or
- d. has violated any of the conditions of the tenancy regarding the uses to which the land may be put; or
- e. has willfully denied the landlord's title to the land; or
- f. has failed to comply with any order passed or direction issued by the Special Officer or the District Judge under this Act.

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Dealing with the provisions of the Act in **Dhulipalli Subba Rao Vs. The Siddappa Dharmakunta, Muppuramand others**, Chinnappa Reddy.,J, as his Lordships then was, held that the Act is meant to prevent rack renting and unreasonable eviction and to secure a fair

deal to the tenant by way of fair rent and security of tenure; that while on the one hand, the Act abridges the rights of the landlord under the general law, on the other it enlarges the rights of the tenant; and that it has made specific inroads into the existing law of landlord and tenant. It was further held that Section 13 of the Act does not enable the landlord to terminate the tenancy before approaching the Revenue Court under the said provision and that no landlord shall be entitled to terminate the tenancy and evict a cultivating tenant unless the conditions mentioned in Section 13 are satisfied and an application for eviction is made before the Tahsildar. This Judgment has been heavily relied upon by the learned Counsel for the appellant.

The learned Senior Counsel for the respondents, however heavily banked upon the Judgment of the Supreme Court in **Kurella Naga Druva Udaya Bhaskara Rao Vs. Galla Jani Kamma (2-supra)**.

The facts in **Kurella Naga Druva Udaya Bhaskara Rao (2-supra)** are almost proximate to that in the present case. The plaintiff in that case filed the suit for eviction of the defendant by pleading that she is the owner of the suit schedule property having purchased the same under registered sale deed dated 10-4-1957 from the previous owners who are the sons of one Varalakshamma who represented her; that the plaintiff has paid the entire sale consideration and obtained possession from the vendors; that the defendant who was her close relative offered to manage the suit land by identifying suitable persons to cultivate the said land, and accordingly lease was granted to various persons from time to time; and that in the year 1971, the defendant himself offered to take the land on annual lease of 40 bags of paddy; that the plaintiff agreed accordingly and the defendant has become the cultivating tenant from 1971 onwards; that after delivering maktha of 40 bags of paddy every year, till Sankranthi 1978, the defendant stopped delivering maktha from Sankranthi 1979; that the plaintiff has issued registered notice dated 12-7-1977 through her counsel demanding payment of agreed rent and

possession of the land; that the defendant issued reply notice dated 13-7-1979 alleging that he was not the tenant of the plaintiff; that he had occupied the land in 1957 and had been cultivating the land ever since then in his own right and that therefore the question of delivering possession to the plaintiff did not arise. The plaintiff pleaded that as the defendant claimed ownership and denied being the cultivating tenant under her, she has treated the defendant as a trespasser from the date of reply notice. The plaintiff has prayed for a decree for possession of the suit schedule land and consequential reliefs. The defendant filed a written statement denying the possession of the plaintiff and pleaded that sale deed dated 10-4-1957 was nominal. He has also raised the plea that on the averment of the plaintiff there was relationship of landlord and cultivating tenant between the parties and therefore the plaintiff ought to have filed eviction petition before the Special Officer (Tenancy Court) under the Act and that the civil court had no jurisdiction. It was also contended that a mere suit for possession was not maintainable in the absence of prayer for declaration as he had disputed the plaintiff's title to the suit property. The trial Court after framing relevant issues decreed the suit based on oral and documentary evidence. The appeal filed by the defendant was dismissed by this Court with the finding that the plaintiff has established her title to the suit land; that agreement dated 18-4-1959 put forth by the defendant was a fabricated document and that the civil court had jurisdiction to entertain the suit. The aggrieved defendant filed appeal with Leave before the Supreme Court. While dealing with the maintainability of the suit, the Supreme Court held that with the plaintiff's pleading that owing to the denial of her title by the defendant, the latter is treated as a trespasser and as the defendant had even denied the landlord-tenant relationship, the tenancy was not an issue in the suit. The Court further held that Section 13 of the Act requires an application to be made to the Special Officer only when a landlord wants to terminate the tenancy and evict his cultivating tenant and not otherwise and that when the plaintiff's case is that the defendant is a trespasser and the case of the defendant is that he was the owner and he was never a tenant of

the suit land either under the plaintiff or anyone else, the suit was for not eviction of an agricultural tenant and therefore Section 13 of the Act was not attracted. Referring to Section 13(e) of the Act, the Supreme Court observed at paras 12 and 13 as under:

“ .... Termination of tenancy and eviction petition under Section 13(e) are contemplated only where (a) the defendant is the cultivating tenant; and (b) the defendant willfully denies the landlord's title to the land. In this case the defendant denied that he was the cultivating tenant of the suit land and plaintiff claimed that defendant was a trespasser. Hence the first requirement for application of Section 13(e) was not satisfied. If the case of the plaintiff had been that the defendant was the cultivating tenant under her and that defendant was claiming to be the cultivating tenant under someone else by setting up title in someone other than the plaintiff-landlord, Section 13(e) would have certainly been attracted.

In this case, as noticed above, the plaintiff alleged she was the owner and the defendant was a trespasser. The defendant asserted that he was the owner by adverse possession and denied that he was a cultivating tenant at any point of time. When neither party to the suit claimed that defendant was the cultivating tenant, and as the suit was not for eviction of a cultivating tenant, the mere denial of the title of the plaintiff by the defendant in respect of an agricultural land, would not mean that only the authorities under the Act will have jurisdiction and that plaintiff should sue for eviction under the Act by approaching the Special Officer. Only a civil suit was the remedy to obtain possession from a trespasser. Therefore the contention that the suit was not maintainable, is liable to be rejected.”

The Supreme Court has relied upon its earlier Judgment in **Abdulla Bin Ali (1-supra)** to fortify its above noted view. It has referred to and relied upon para-6 of the Judgment in that case which reads as under :

“In our opinion the High Court was not quite correct in observing that the suit was filed by the plaintiffs-appellants on the basis of relationship of landlord and tenant. Indeed, when the defendants denied the title of the plaintiffs and the tenancy,

the plaintiffs filed the present suit treating them to be trespassers and the suit is not on the basis of the relationship of landlord and tenant between the parties. It is no doubt true that the plaintiff had alleged that defendant 2 was a tenant but on the denial of the tenancy and the title of the plaintiffs-appellants they filed a suit treating the defendant to be a trespasser and a suit against a trespasser would lie only in the civil court and not in the revenue court.”

It is interesting to note that a converse view to that taken in **Kurella Naga Druva Udaya Bhaskara Rao (2-supra)** was expressed by a coordinate Bench of two Judges in **Shyam Lal Vs. Deepa Dass Chela Ram Chela Garib Dass**, decided on 27-2-2015. The Court was dealing with a case arising under Punjab Tenancy Act 1887 and Punjab Security of Land Tenures Act, 1953. The brief facts of that case are that the plaintiff was a tenant of the previous owner and the defendant who has purchased the property was trying to evict him without following due process of law. The defendant while agreeing that the plaintiff was a tenant of the original owner, however, took the plea that the tenancy expired on 28-5-2005; that during the subsistence of the tenancy, he has purchased the property and that after the expiry of lease period on 28-5-2005, the suit property was to revert back to the defendant. He has filed a counter claim seeking a decree for mandatory injunction directing the plaintiff to handover vacant physical possession of the land with damages for unauthorized occupation of the suit land. The trial Court dismissed the suit and decreed the counter claim with the finding that as the tenancy over the suit property has expired on 28-5-2005, the defendant has become a trespasser. The said Judgment was confirmed in appeal. The High Court in the Second Appeal filed by the plaintiff has also confirmed the concurrent Judgments of the Courts below. Referring to Section 9 of the Punjab Security of Land Tenures Act, 1953, the High Court held that the said provision protects the tenancy and not a trespasser in possession after expiry of the lease.

Disagreeing with the views and findings of all the hierarchical courts, the Supreme Court observed that the provisions of the Punjab Security of Land Tenures Act, 1953 protect the tenancy of agricultural land in favour of the tenant; that the grounds specified by the said Act for eviction do not include eviction of tenant after expiry of lease; that therefore after the expiry of lease the tenant would be a statutory tenant and such a tenant can be evicted only under one or other grounds contemplated under Section 9 of the Act and that such eviction proceedings have to be necessarily initiated before the competent Revenue Court. In its Judgment, the Supreme court has referred to its earlier Judgment in **Sukhdev Singh (D) through L.Rs. and others Vs. Puran and others** wherein while dealing with the provisions of the Punjab Security of Land Tenures Act 1953, the Supreme Court held that after the expiry of fixed term tenancy in respect of agricultural land, the provisions of the 1953 Act will have no application. The Court in that case held :

“In our view, the aforesaid argument of the learned counsel does not merit acceptance. Admittedly, the petitioners were granted lease of the suit land in 1955 for a period of 20 years and the term of their lease ended in 1975. Section 9 of the 1953 Act is attracted only when a tenant is sought to be evicted. The said section is not applicable to a case where the tenancy gets terminated by efflux of time and the person occupying the lease premises no longer remains tenant. There is no provision in the 1953 Act similar to those contained in the Urban Rent Control Legislations under which a tenant becomes statutory tenant after expiry of the contractual tenure of the tenancy.”

While differing with the view in **Sukhdev Singh (D) through L.Rs. and others (15-supra)**, the Court referred the issue to a larger Bench for laying down the correct law.

A perusal of the Act and Punjab Security of Land Tenures Act 1953 shows that these Acts contained almost similar if not identical provisions for eviction of tenants (though the grounds for eviction vary under the two enactments). The two Judge Bench in **Shyam Lal (14-**

**supra)** expressed the view reflected in the Judgment of this Court in **Dhulipalli Subba Rao (13-supra)**.

From a plain reading of Section 13 of the Act, as interpreted in **Dhulipalli Subba Rao (13-supra)**, there can be little doubt that for eviction simplicitor of a tenant, the only remedy available to the landlord is to approach the Tenancy Court. However, as the debate on the jurisdiction of the Revenue Tribunals vis-à-vis civil courts is thrown open by the Apex Court in **Shyam Lal (14-supra)** by referring the same to a 3-Judge Bench, it is neither appropriate nor desirable to render conclusive findings on this aspect. Nevertheless, this Court has to consider whether on the facts of the case, the jurisdiction of the civil court is ousted or not.

In **Abdul Waheed Khan (9-supra)** Koka Subba Rao, J., as his Lordships then was, held that under Section 9 of the CPC a civil court can entertain a suit of every nature except a suit of which its cognizance is either expressly or impliedly barred; that it is a settled principle that it is for the party who seeks to oust the jurisdiction of civil court to establish his contention; and that it is also equally settled that a statute ousting the jurisdiction of a civil court must be strictly construed.

In **Raja Ram Kumar Bhargava (dead) by L.Rs (10-supra)**, speaking for the Bench, Venkatachalaiah, J (as his Lordships then was) held:

“Generally speaking, the broad guiding considerations are that whenever a right, not pre-existing in common-law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil courts’ jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognized by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil courts’ jurisdiction, then both the common-law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inherence....”

It is appropriate to note that the lower Court has rested its conclusions on issue No.1 relating to jurisdiction based on two Judgments of this Court in **M. Ramaiah (3-supra)** and **Satyapramoda Thirthaswamulavaru Vs. Mula Gunnayya (deceased) and others**. It has held :

“I have gone through the aforesaid two rulings. The two decisions clearly held that where one of the reliefs prayed for the plaint can be granted only by a civil court, then that suit is maintainable in the civil court, though some of the reliefs can be granted by Tenancy Tribunal. In this suit also, the defendant denied the title of the plaintiffs. In the plaint, the plaintiffs are praying for past and future profits. The relief of past and future profits cannot be granted by the tenancy tribunal. Therefore, certainly this suit is maintainable. I answer this issue accordingly.”

Let me therefore consider these two Judgments.

In **M. Ramaiah (3-supra)** this Court held that the mere fact that a portion of the claim is excluded from the jurisdiction of Civil Court is no bar to the trial by the Civil Court of the entire suit which was cognizable by the Civil Court only. It is appropriate to discuss the facts of the said case in some detail. The suit property was originally unenfranchised service inam land. One Polayya who was the head of the family leased out the suit land to defendant No.1 in the year 1940-41 on sharing system. Defendant No.1 continued as a tenant holding over and was paying the agreed share till 1953-54. After the death of Polayya plaintiff Nos.1 and 2 became the owners of the suit property along with Mangamma w/o. Polayya. Defendant No.1 continued as a tenant holding over even after the death of Polayya. On 29-3-1957, plaintiff Nos.1 and 2 and the said Mangamma sold the land to plaintiff No.3. Defendant No.1 was duly informed about the same. Defendant No.1 instituted O.S.No.90 of 1957 for grant of permanent injunction restraining plaintiff No.3 from interfering with his possession. That suit was decreed. The plaintiffs have filed a suit for declaration of title,

recovery of possession and for the past and future profits. Defendant No.1 filed a written statement denying that he was a tenant and claimed himself to be the service holder enjoying the inam. Defendant No.1 later died. Defendant Nos.2 to 4 were brought on record in place of the deceased defendant. They have filed written statement adopting the written statement filed by defendant No.1. They have further raised a ground that even on the plaintiffs' showing defendant No.1 was a tenant and that the civil court therefore cannot have any jurisdiction to direct eviction of the defendants. The trial court after framing the issues and recording evidence adduced by the parties, decreed the suit. The appeal filed by the defendants was dismissed by the District Judge. The defendants thereafter have filed the Second Appeal before this Court. The main contention advanced by the appellants before this Court was that on the plaintiffs' own showing, defendant No.1 was a tenant holding over on the date of filing of the suit and that therefore the only remedy they had was to approach the Tenancy Court under Section 13 of the Act.

Dealing with this issue, the Court has first dealt with the aspect of the pleadings which determine the jurisdiction. The Court observed that the jurisdiction with reference to the subject matter of claim depends upon the averments made in the plaint and not upon those which may ultimately be found to be true; that mere allegations made by the defendants in the written statement are not enough to decide the forum of a suit and that whether a particular suit is cognizable by civil court or Tenancy Court, it is the allegations made in the plaint which must decide the question and not the pleas raised by the defendants in the written statement. The court held :

“In a suit in which there are more than one relief claimed and the some reliefs can be granted by the civil court while the others can be granted only by a tenancy court, the question naturally arises as to what procedure should be adopted in such cases. One mode is to direct the amendment of the plaint so as to bring it within the jurisdiction of the civil court and allow the plaintiff to seek remedy in regard to the relief which is cognizable by the tenancy court. But such a splitting may not be possible in all cases. In such cases, therefore, as stated

earlier, the cause of action and substance of reliefs asked in the plaint will have to be carefully examined and if the substantial relief based on the cause of action can be granted only by the civil court and splitting of the reliefs is neither possible nor desirable, then it cannot be argued that the civil court has no jurisdiction to try it.”

The Court further held :

“A reading of the plaint will disclose that the first defendant denying the title of the plaintiffs set up a title in himself and stopped paying rent. On those allegations, declaration of plaintiffs’ title was sought apart from claiming the profits past and future along with the relief for the recovery of possession of the suit land. While it is true that on the basis of default and the tenant denying the title of the landlord and setting up a title in himself a petition for eviction can be filed before the tenancy court under the Act, it cannot however be denied that the tenancy court is not competent to grant reliefs of declaration of plaintiffs title and the profits past and future. It may be that it can incidentally decide the question of title if it is necessary for effective disposal of the petition filed under Section 13 of the Act. There cannot be any doubt that it cannot decide the question of title finally and the parties will have to agitate the same before a Civil Court. In the circumstances mentioned in the plaint the substantial relief in the case is that of declaration of the plaintiff’s title, in the denial of which the defendant was not only interested but was persisting. It is trite to say that the plaintiffs who are out of possession cannot ask for mere declaration of their title. It was, therefore, not possible for the plaintiffs to split the reliefs and so they were obliged to ask not only declaration of title but also recovery of possession and the profits. The entire suit, as it is framed, is cognizable only by the Civil Court. Although one of the reliefs i.e., recovery of possession alone may be separately cognizable exclusively by the tenancy court, it is however abundantly plain that the tenancy court cannot hear the entire case as it is framed and grant reliefs claimed by the plaintiffs. It is evident that the jurisdiction of the civil court will not be considered as barred unless the entire suit as brought is barred under the provisions of the Act. Undoubtedly, what are barred are the disputes falling within the ambit of the Act. The mere fact that portion or

the claim is excluded from the jurisdiction of the Civil Court is no bar to the trial by the Civil Court of the entire suit which is cognizable by the Civil Court only. I have, therefore, no doubt that the Civil Court was competent to entertain the present suit.”

I n **Satyapramoda Thirthaswamulavaru (16-supra)** the Division Bench of this Court referred to and relied upon the Judgment i n **M. Ramaiah (3-supra)** besides relying upon various other Judgments of this Court. The said case is more or less similar to the present case on hand where it was the positive case of the plaintiff that the defendants were all tenants; that they paid rents till the end of 1365 Fasli and that they were liable for eviction on the ground of willful default in payment of rents. However, without approaching the Revenue Tribunal they have filed the civil suit for a decree for ejectment and for damages and for past profits for Faslies 1365 to 1367. Repelling the contention raised on behalf of the defendants that only the Tenancy Court has jurisdiction to entertain the application for eviction and the civil court had no jurisdiction, the Division Bench held at para-31 as under :

“It is now well established by a catena of decisions of this Court reported in Chigurupati Venkatasubbaiah vs. Ravi Punneya (1957) 2 An.W.R.204), Mahendrada Ramayya vs. Mahendrada Govindu (1966(1) An.W.R.352) and Donti Reddy Venkat Reddy vs. Bhimavarapu Bhushireddy (1970) 2 An.WR.226 : AIR 1971 A.P. 87 (FB) that when only a part of the relief claimed can be granted by a tenancy court, the Civil Court had jurisdiction to entertain the suit. Indisputably in this case, the Tenancy Court cannot grant relief for damages and only a relief of eviction can be granted by the Revenue Court and, therefore, in our opinion, the civil court has undoubtedly, jurisdiction to entertain the suit, and the court below was in error in holding that the civil court had no jurisdiction to entertain the suit.”

The Full Bench of this Court in **Dontireddy Venkata Reddy (6-supra)** dealing with the question whether Tenancy Tahsildar can deal with the question of title in deciding the relationship of landlord

and cultivating tenant, while holding that he has such jurisdiction, made certain critical observations. The Bench observed at para-32 as under :

“A reading of the aforesaid decisions clearly show(s) that whether a Tribunal has been given the exclusive jurisdiction to decide a particular circumstance depends upon the language of the Act and aims and objects for which the Act has been enacted. If a given Act postulates that on the existence of certain state of facts the Tribunal will have jurisdiction to decide the matters entrusted to it under the Act, the Tribunal will no doubt be competent to decide whether that state of facts exists but the existence of such state of facts being a jurisdictional factor it cannot give to itself jurisdiction by a wrong decision as to the existence of such state of facts. Such a decision would be in regard to a collateral fact and can be questioned in a Civil Court and the jurisdiction of the Civil Court is not barred in such cases. Whereas in cases where the tribunal has been given exclusive jurisdiction to decide the existence of facts on the basis of which it could proceed to pass certain orders, the decision on those facts would also be final and conclusive and cannot be questioned in a Civil Court.”

The Bench further observed at para 33 :

“ .... No doubt in a given case he can determine if dispute arises with regard to such relationship but such a decision will only be a decision regarding a jurisdictional fact or a collateral fact and such a decision can always be questioned in a Civil Court....”

There is no quarrel on the proposition that the plaint must be read as a whole and that the averments in the plaint only determine the jurisdiction of the courts. In paragraph-4 of the plaint, the respondent pleaded that the appellant has taken the land on lease in the year 1979. In paragraph-5 he has averred that the appellant was not paying maktha after getting into possession; that the respondent has got issued registered notice dated 26-6-1984; that the appellant has

issued a reply notice dated 11-7-1984 denying tenancy and set up the alleged agreement of sale between the parties as per which the plaintiff agreed to sell the property for a sale consideration of Rs.14,000/- per acre and receipt of part sale consideration by one Poliseti Vasudeva Rao, the brother of the plaintiff. In paragraph-7, the plaintiff has referred to another legal notice dated 26-10-1985 by way of rejoinder to which the appellant has issued reply notice dated 19-11-1985 reiterating all the averments made in his earlier notice. In paragraphs 8 and 9, which constitute core pleadings, the plaintiff averred as under :

“As the defendant has denied the tenancy and is contending that the plaintiff has agreed to sell the property to him and as such he is entitled to continue in possession of the property this suit is filed for recovery of possession of the plaint schedule property with past and future profits. The plaintiff is also entitled to interest on the arrears of Maktha from the respective due dates and the plaintiff claims interest at 12% per annum. The plaintiff also claims past profits limiting his claim for 3 years prior to suit.

As already stated, the plaint schedule property belongs to the plaintiff, he never agreed to sell the plaint schedule property to the defendant nor did he receive any amount under the alleged agreement of sale from the defendant and the said Sri P. Vasudeva Rao was not the agent of the plaintiff and the plaintiff never authorized him to sell the property. In the second reply notice the defendant alleged that at the time of construction of terraced building, the plaintiff agreed to sell the property before the persons mentioned in his reply notice which is not correct. There is no need or necessity for the plaintiff to sell the plaint schedule property for the construction of his terraced building and the plaintiff never agreed to sell the property to anybody much less to the defendant to raise funds for the construction of his terraced building. The defendant is only a tenant but having entered into possession, he now set up contract of sale which the plaintiff never entered into with him. The defendant has no right to continue in possession of the property.”

The plaintiff sought the following reliefs in the suit:

- a. For delivery of possession of the plaint schedule property

to the plaintiff evicting the defendant therefrom.

- b. For recovery of Rs.50,119-20 towards past profits with subsequent interest from the date<sup>4</sup> of plaint till date of payment?
- c. For future profits at the rate to be determined by this Hon'ble Court from the date of suit till delivery of possession.
- d. To appoint a receiver to manage the plaint schedule property during the pendency of the suit.
- e. To grant costs of the suit.
- f. To grant such further or other reliefs deemed fit and proper in the circumstances of the case.

From the facts pleaded in the plaint and the issues framed by the trial Court, the suit cannot be treated merely as a suit for termination of tenancy and for recovery of possession simplicitor. Though no relief of declaration of title was claimed in form, in content, the suit involved a title dispute. This is not merely a case where the tenant has willfully denied the landlord's title to the land which is the ground envisaged under Section 13(e) of the Act for seeking his eviction, but also he has asserted his right to remain in possession dehors the tenancy based on the purported oral agreement of sale. Issue No.3 and additional Issue Nos.1 and 2, are very wide in their scope, under which the trial Court discussed the appellant's right based on the oral agreement set up by him. As held by this Court in **M. Ramaiah (3-supra)** while the Tenancy court is a forum created by a special statute, it can exercise limited jurisdiction which is vested in it by the provisions of the Act. While exercising its jurisdiction under Section 13 of the Act, the Tenancy Court may decide the question of title incidentally and it is only the civil court which has jurisdiction to finally decide that question. Even if the respondent has approached the Tenancy Court and that Court has rendered findings on the alleged agreement of sale and the right claimed by the appellant to remain in possession based on such agreement of sale, the aggrieved party

would have landed the dispute before the lower court by way of a civil suit.

Following the ratio in **M. Ramaiah (3-supra)** although one of the reliefs which is recovery of possession from a tenant is cognizable exclusively by the Tenancy Court, the jurisdiction of civil court will not be considered as barred unless the entire suit as brought before it is barred under the provisions of the Act. As noted supra, this view was followed by the Division Bench of this Court in **Satyapramoda Thirthaswamulavaru (16-supra)** wherein the plaintiff has claimed the reliefs of decree for ejectment and damages and past profits. The Division Bench held that the Tenancy Court cannot grant relief of damages and therefore the Civil Court had undoubtedly jurisdiction to entertain the suit. The relief claimed in the suit filed by the plaintiffs is similar to that claimed in **Satya Pramoda (16-supra)**.

It is relevant to note the conduct of the appellant in this context. He has set up an alleged oral agreement of sale said to have taken place as far back as October 1979. He has not taken any steps by calling upon the plaintiff during his life time or the respondents herein who are his legal heirs thereafter calling upon them to execute the sale deed or filed a specific performance suit for nearly six years after the so-called oral agreement of sale. At least after the present suit was filed against him, the appellant has failed to file the specific performance suit. The agreement set up by the appellant being oral, he cannot even claim the benefit of the doctrine of part performance under Section 53-A of the Transfer of Property Act 1882 as held by the Supreme Court in **Mool Chand Bakhru and another Vs. Rohan and others** and by this Court in **Narasayya (12-supra)**. The appellant has not even set up the plea of adverse possession. On the one hand he is denying tenancy and on the other hand he has failed to prove the plea of oral agreement of sale (The finding rendered on this aspect by the trial court has not even been contested in his appeal as no submissions in this regard are made by

the learned Counsel for the appellant). On these indisputable facts, continued possession of the appellant is indefensible irrespective of which ever forum decides the case. In fact, the appellant is only seeking to prolong the litigation by non-suiting the respondents on the plea of lack of jurisdiction in the civil court. If his plea is accepted and the respondents are relegated to the Tenancy Court, consistent with his stand taken in the suit, the appellant will plead absence of tenancy and that consequently the Tenancy Court has no jurisdiction to order his eviction in the absence of landlord-tenant relationship. In other words, the appellant is seeking to use the respondents who are admittedly the owners of the property and who are denied possession as well as rents for 35 years, as a foot ball. Even if the respondents have approached the Tenancy court, its finding not being conclusive on the plea of agreement of sale set up by the appellant, either party would have approached the civil court by way of a civil suit. Therefore, on the pleadings of the parties, no prejudice was caused to the appellant on account of the lower court entertaining the suit. Indeed, the lower court has conducted a full fledged trial and made a threadbare discussion on the merits of the case, including the plea of oral agreement of sale propounded by the appellant. Therefore, on the facts of the present case, it would be a grave travesty of justice to non-suit the respondents on the ground of lack of jurisdiction in the civil court.

On the analysis as above, I hold that the lower court has jurisdiction to entertain the suit and it has rightly done so.

No other point was argued by the learned Counsel for the appellant.

For the above mentioned reasons, the appeal fails and the same is accordingly dismissed.

As a sequel to the dismissal of the appeal, interim order dated 10-8-1994 is vacated and CMP Nos.12020 of 1994 and 13149 of 1994 are disposed of as infructuous.

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Justice C.V. Nagarjuna Reddy

Date : 01-05-2015

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