THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.4536 of 2011

ORDER:

This Civil Revision Petition is filed challenging the order dt.23-06-2010 in A.T.A.No.3 of 2005 of the District Judge and Appellate Authority under the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short "the Act") at Srikakulam confirming the order dt.17-01-2005 in A.T.C.No.1 of 2003 of the Special Officer-cum-Principal Junior Civil Judge, Srikakulam.

2. The 1st respondent herein filed A.T.C.No.1 of 2003 before the Special Officer-cum-Principal Junior Civil Judge, Srikakulam under Section 13(a) and (c) of the Act seeking eviction of petitioners and

   2nd respondent alleging that 2nd respondent is his tenant and

   2nd respondent had committed default in payment of rent and had also sublet the premises to petitioners. He also stated that

   2nd respondent had filed a suit O.S.No.97 of 1994 before the Additional Junior Civil Judge, Srikakulam against a third party admitting that he is a tenant under the 1st respondent; the said suit was dismissed on

   20-11-1998; that 2nd respondent intended to grab the property of

   1st respondent and had also sublet a portion of the property to the petitioners herein.

3. The 2nd respondent filed a counter denying the above averments and contending that the judgment in O.S.No.97 of

1994 has no application since the said suit relates to different land of Ac.0.06 cents in Sy.No.94/11. He contended that 1st respondent was not the absolute owner of the property and that he had a sister by name Rajulamma, who also has a share therein and that 1st respondent alone cannot maintain the A.T.C. He also raised a plea that 1st respondent had executed Ex.R-3 agreement of sale dt.17-03-1994 agreeing to sell the A.T.C. schedule premises of Ac.0.34 cents in Sy.Nos.51 and 52 (old Sy.No.93/11) of Patrunivalasa village to 2nd respondent for Rs.20,000/- and that 1st respondent had received an advance of Rs.11,000/-. He contended that thereafter 1st respondent did not execute the sale deed in spite of request by 2nd respondent and that his possession is protected under Section 53(A) of the Transfer of Property Act, 1882. He also contended that he obtained a pattadar pass book and title deed from the Revenue authorities and was paying land revenue to the Government. He also stated that he sold away the A.T.C. schedule premises under a registered sale deed dt.21-11-2002 to petitioners and put them in possession and enjoyment of the property. He denied that there was any landlord and tenant relationship between him and 1st respondent, and contended that he is in possession of the property as a vendee.

4. Petitioners filed a counter-affidavit adopting the stand taken by 2nd respondent. They also contended that since 2nd respondent is not the tenant, the provisions of the Act are not attracted and the petition be dismissed.

5. Before the Special Officer, the 1st respondent examined himself

as P.W.1 and marked Ex.P-1. The petitioners and 2nd respondent examined R.Ws.1 to 5 and marked Exs.R-1 to R-3.

6. By order dt.17-01-2005, the Court below allowed the A.T.C. in respect of Ac.0.28 cents out of Ac.0.34 cents in Sy.Nos.51 and 52 (old Sy.No.93/11) since Ac.0.06 cents was said to be in possession of a trespasser by name Seera Asiripolu. It held that 1st respondent had established the relationship of landlord and tenant between

2nd respondent and himself; that he had also proved that there is default in payment of rent by 2nd respondent; and there was also denial of title of 1st respondent. It held that 2nd respondent as R.W.1 admitted that he and his ancestors were tenants of 1st respondent; that in Ex.P-1 (the certified copy of the judgment in O.S.No.97 of 1994 filed by 2nd respondent against third parties) also, the 2nd respondent had admitted that he is a tenant of 1st respondent; having admitted in Ex.P-1 that he is a tenant, the 2nd respondent is estopped from taking a plea that he is not a tenant in respect of the A.T.C. schedule property under

1st respondent and that he is the owner of the schedule property. It further held that there was no registered sale deed executed by

1st respondent in favour of 2nd respondent and title does not pass under an agreement of sale. It also took note of the fact that signature of

1st respondent on Ex.R-3 agreement of sale had been struck off; that Ex.R-3 agreement was filed after the completion of evidence of

1st respondent; the striking out of the signature of executant on Ex.R-3 showed that 1st respondent did not want to act upon Ex.R-3; the

2nd respondent had not even issued a notice demanding specific performance of the said agreement of sale; and the agreement of sale Ex.R-3 is deemed to be a cancelled agreement once the signature of the executant was strike out on it. It further held that Ex.R-3 is not adequately stamped as required under Article 47-A of the Stamp Act,1899. It held that issuance of pattadar pass book or title deed to 2nd respondent does not confer any right on 2nd respondent as owner of the property and there was no basis for making such entries in

Exs.R-1 and R-3 by the Revenue authorities. It also held that one

co-sharer can maintain a suit for eviction and there was no necessity for other co-sharers to be impleaded. It held that there is a clear denial of title by 1st respondent of the 2nd respondent in view of the reliance of 2nd respondent on Ex.R-3 and the sale of the A.T.C. schedule property by 2nd respondent to petitioners. It held that petitioners would not get any right in the property since 2nd respondent had no right, title or interest therein. Since Ac.0.06 cents out of Ac.0.34 cents was admitted to be in possession of one Asiripolu and since the petitioners and 2nd respondent were in possession of the balance extent of Ac.0.28 cents, the order of eviction was confined to this Ac.0.28 cents.

7. Challenging this, the petitioners filed A.T.A.No.3 of 2005 while the legal heirs of deceased 2nd respondent filed A.T.A.No.5 of

2005 before the District Judge, Srikakulam.

8. Both the appeals were dismissed on 23-06-2010 by the Principal District Judge constituted under the Act. The District Judge also confirmed the findings of the Special Officer.

9. Challenging the same, this Revision is filed.

10. Heard Sri A.Ramarao, learned counsel for petitioners and Ms.C.Shilpa, learned counsel for Sri D.Ramalinga Swamy, learned counsel for 1st respondent.

11. Learned counsel for petitioners contended that the petitioners are aggrieved by the orders of eviction passed by the Special Officer and the District Judge and since the petitioners had purchased the property from the 2nd respondent under a registered sale deed dt.21-11-2002, they are entitled to file this appeal. He also pointed out that the findings of the Special Officer and the District Judge are unsustainable and that both of them should have held that

    2nd respondent had purchased the A.T.C. schedule property from

    1st respondent. He also contended that both of them ought not to have relied upon the admission purported to be made by 2nd respondent in O.S.No.97 of 1994 since the subject matter of that suit is different from the A.T.C. schedule property.

12. Learned counsel for 1st respondent refuted the above contentions and supported the orders passed by the Courts below.

13. Admittedly, the 2nd respondent as R.W.1 had deposed in the

A.T.C. that he and his ancestors had been cultivating the land of 1st respondent for 50 years previously prior to the filing of the A.T.C. and that 1st respondent had sold away the A.T.C. schedule land and tenancy ceased. It has been the contention of the 2nd respondent that 1st respondent had agreed to sell the A.T.C. schedule property to him and had executed Ex.R-3 agreement of sale dt.17-03-1994 in his favour. Admittedly, no sale deed had been obtained by 2nd respondent from 1st respondent in regard to this transaction. Also the evidence on record indicates that the signature of the executant of Ex.R-3 had been struck off on it. In this view of the matter, I am of the opinion that both the Special Officer and the lower appellate Court were right in taking the view that, assuming that 1st respondent did execute Ex.R-3, striking out of his signature suggests that the agreement of sale had been cancelled. In fact no plea was taken by 2nd respondent in his counter about the striking of signature of the executant in Ex.R-3 by

1st respondent. The pattadar passbook and title deeds Exs.R-1 and R-2 do not confer any title on 2nd respondent and can only be said to have been issued for the purpose of payment of land revenue to the State. In view of the fact that there is no conveyance of title from 1st respondent to 2nd respondent, the status of 1st respondent as tenant of

2nd respondent continues and tenancy was never extinguished.

14. Admittedly, the 2nd respondent had not paid rent to 1st respondent for 5 years prior to the filing of the A.T.C. Not only on the said ground, but also on the ground that 2nd respondent had

denied the title of 1st respondent and had also sold away the A.T.C. schedule property to petitioner, the petitioners as well as 2nd respondent became liable to be evicted from the A.T.C. schedule property.

15. In this view of the mater, I find that there is no error of jurisdiction warranting interference by this Court with the orders dt.23-06-2010 in A.T.C.No.3 of 2005 of the District Judge-cum-appellate authority under the Act at Srikakulam or the order dt.17-01-2005 in A.T.C.No.1 of 2003 of the Special Officer-cum-Principal Junior Civil Judge, Srikakulam. I am satisfied that both these authorities had correctly appreciated the evidence on record and come to conclusion that petitioners are liable to evicted along with the 2nd respondent from the extent of Ac.0.28 cents in Sy.Nos.51 and 52 corresponding to old Sy.No.93/11.

16. Therefore, the Civil Revision Petition is dismissed. No costs.

17. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

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JUSTICE M.S. RAMACHANDRA RAO

Date: 16-09-2015

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