

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1890 of 2014

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.27.03.2014 in A.T.A.No.37 of 2012 of the Tenancy Appellate Tribunal – cum – Principal District Judge, Rajahmundry reversing the order dt.06.06.2012 in A.T.C.No.16 of 2008 on the file of Special Officer – cum – Principal Junior Civil Judge, Kakinada.

2. The respondent nos.1 and 2 filed A.T.C.No.16 of 2008 under Section 13(A) of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, (for short, 'the Act'), for eviction of petitioners and respondent nos.3 to 5 from the petition schedule property on the ground that they had committed willful default in payment of rent.
3. They alleged that 1st respondent had purchased an extent of Acs.6.25 cents covered by survey nos.73 and 74 of Uppumilli Village, Kajuluru Mandal, Tallarevu Sub-Registry, East Godavari District under a registered sale deed dt.12.12.1973 from one Mutha Krishnamurthy; by that date, the father of respondent nos.3 to 5 and grandfather of petitioner, by name Yalla Peddaraju, was the cultivating tenant of an extent of Acs.12.50 cents covered by survey nos.73 and 74, out of which respondent nos.1 and 2 had purchased a part; that the said Yalla Peddaraju took lease of the said property long back from one M. Sitaratnam on condition of paying annual *maktha* of 120 bags per year; after the sale, the 1st respondent informed Yalla

Peddaraju to pay her share of *maktha* of 60 bags per year, and that Yalla Peddaraju paid it to 1st respondent and obtained receipts from 2nd respondent, who is the husband of 1st respondent; the *maktha* was paid up to January, 2002 under receipts; the vendor of 1st respondent, i.e., Mutha Krishnamurthy, filed O.S.No.949 of 1980 for a declaration that the sale deed dt.12.12.1973 executed in favour of 1st respondent is nominal and was obtained by fraud and misrepresentation by 2nd respondent and for cancellation of it; although the said suit was decreed on 14.09.1997, the respondent nos.1 and 2 filed A.S.No.79 of 1987 on 04.11.1994 before the II Additional Sub-Ordinate Judge, Kakinada which reversed the same, and the appellate judgment became final; pending the suit, the father of respondent nos.3 to 5 died *intestate*, and subsequently they were impleaded as defendants in the suit; so the petitioners are fully aware of the developments but did not pay *maktha* from 2003-2004 to 2007-08 in spite of several requests by 2nd respondent to pay the rents and obtain receipt; that 2nd respondent, being a diabetic patient, was undergoing treatment at Hyderabad and so could not meet the petitioners as well as respondent nos.3 to 5 subsequently, and taking advantage of it they developed supine indifference and stopped paying the *maktha*; and that they issued Ex.A.2-legal notice dt.13.03.2008 to petitioners and respondent nos.3 to 5 demanding payment of arrears of *maktha*, but they evaded to receive it.

4. The respondent nos.3 to 5 remained *ex parte* in the A.T.C.No.16 of 2008.

5. The petitioners however filed a common counter-affidavit. They disputed the contentions raised by respondent nos.1 and 2 in the A.T.C.No.16 of 2008. They stated that it may be true that Yalla Peddaraju paid *maktha* to 1st respondent and obtained receipts from 2nd respondent till January, 1980, but stated that O.S.No.949 of 1980 was filed by Mutha Krishnamurthy; that it was decreed on 14.09.1997, and A.S.No.79 of 1987 filed against it was allowed. The petitioners contended that they did not know respondent nos.1 and 2 and there is no relationship of landlord and tenant between them and respondent nos.1 and 2 at any point of time. They also claimed that they never saw the faces of respondent nos.1 and 2 at any point of time, and there was no privity of contract. They claimed that petitioner nos.1 to 4 were in possession of different bits of land in survey nos.94 and 92 apart from 19/7 and 68/9, that pattadar passbooks and title deeds had been issued to them, and during the lifetime of their father they even partitioned these properties. They also claimed to have obtained loan from State Bank of India, Kuyyeru and Primary Agricultural Co-operative Society, Dugguduru by pledging their title deeds. They also contended that respondent nos.1 and 2 did not mention their documents of title and had also not filed tax receipts in their favour. They also contended that there was no landlord and tenant relationship between respondent nos.1 and 2 and themselves. They claimed that respondent nos.3 to 5 were not having any property in the petition schedule survey numbers and that respondent nos.3 and 4 never looked after the affairs of petitioners. They also pleaded that by virtue of adverse possession, respondent nos.1 and 2 have nothing to do with the petition schedule property, and that petitioners had acquired title

to the same by adverse possession.

6. Before the Special Officer, respondent nos.1 and 2 examined PW.1 and marked Exs.A.1 to A.9. The petitioners examined RW.1 and marked Exs.B.1 to B.18.
7. By order dt.06.06.2012, the Special Officer dismissed A.T.C.No.16 of 2008. The Special Officer held that although in A.S.No.79 of 1987 there is an admission by Yalla Peddaraju, the grandfather of petitioners, that he used to pay *maktha* to 1st respondent through 2nd respondent, since PW.1 admitted that no documents were filed to prove this, it cannot be concluded that petitioners continued to be tenants under respondent nos.1 and 2. It also relied on the evidence of PW.1 that he cannot identify petitioners even though petitioners were present in the Court hall, to give a finding that there was no relationship of landlord and tenant between respondent nos.1 and 2 and petitioners. It held that respondent nos.1 and 2 were obliged to show that petitioners continued the tenancy after the death of their grandfather by paying *maktha*, and in the absence of any evidence in support of this, it cannot be said that there is any landlord tenancy relationship between respondent nos.1 and 2 and petitioners. It also referred to the fact that petitioners pleaded adverse possession and held that since respondents failed to show that even twelve years before filing of A.T.C.No.16 of 2008 the petitioners had paid *maktha* to them by admitting tenancy, therefore, the A.T.C. should be dismissed.
8. Challenging the same, respondent nos.1 and 2 filed A.T.A.No.37 of 2012 before the Tenancy Appellate Tribunal-cum-Principal District Judge, Rajahmundry.

9. By order dt.27.03.2014, the said A.T.A.No.37 of 2012 was allowed. It held that in A.S.No.79 of 1987 the father of respondent nos.3 to 5 as well as the grandfather of petitioners were parties and the findings given therein are binding on petitioners and respondent nos.3 to 5; that petitioners had set up their title in respect of property in the survey numbers other than the A.T.C. schedule survey numbers and they never specifically mentioned that they are in possession and enjoyment of the property which is subject matter of the A.T.C. It observed that petitioners had claimed that their father partitioned the properties and gave it to them, but they did not mention as to how their father got the property; that pattadar passbooks do not confer any title; and that the finding of Special Officer in para.11 that petitioners pleaded that they have nothing to do with the A.T.C. schedule property and they had property in Sy.Nos.92, 94, 19 and 68, while the A.T.C. schedule properties covered by survey nos.73 and 74 had not been challenged in cross appeal or by a separate appeal. It held that merely because PW.1 did not identify the petitioners and there is a gap of nearly six years from the date of earlier default to the date of filing of the case, the Special Officer was not correct in opining that there was no relationship of landlord and tenant between petitioners and respondent nos.1 and 2; that in A.S.No.79 of 1987, Yalla Peddaraju had admitted that he used to pay *maktha* to 1st respondent through 2nd respondent and this was also noticed by the Special Officer; and in view of Section 114 (d) of the Evidence Act, 1872 the same state of affairs is deemed to be in continuance, i.e., the relationship of tenancy continued, and it is for petitioners to prove how that tenancy came to an end.

10. Challenging the same, the present Revision is filed.
11. Heard Sri J. Bhaskara Rao, counsel for petitioners and Sri P. Rajesh Babu, counsel for respondent nos.1 and 2.
12. The counsel for petitioners contended firstly that the judgment in A.S.No.79 of 1987 could not have been relied upon by the Appellate Tribunal and that the presumption under Section 114 (d) of the Evidence Act, 1872 also could not have been invoked by the Appellate Tribunal; that some documents had been filed as additional evidence which showed the correlation between the petition schedule property in survey nos.73 and 74 and survey nos.92/1, 94 and 68/9; although he conceded that pattedar passbooks and title deeds are not sufficient to establish the title of petitioners, he contended that the Special Officer's findings that 1st respondent could not identify petitioners, cannot be ignored.
13. On the other hand, the counsel for respondent nos.1 and 2 refuted the above contentions and supported the order passed by the Court below.
14. I have noted the submissions of both sides.
15. From the facts narrated above, it is not disputed that the title of respondent nos.1 and 2 in respect of A.T.C. schedule property was upheld vide judgment dt.04.11.1994 in A.S.No.79 of 1987 by the II Additional Sub-Ordinate Judge, which was marked as Ex.A.1 in A.T.C.No.16 of 2008. The father of petitioners, i.e., Late Venkata Reddy, is the 3rd respondent in the said appeal. In the said judgment it was held that Yalla Peddaraju, who was 2nd defendant in the suit O.S.No.949 of 1980, out of which the said

appeal arose, admitted that he paid rents to 1st respondent. This is also admitted in the counter-affidavit filed by petitioners in the A.T.C.No.16 of 2008. The petitioners have not set-up any independent title to the property except stating that they obtained the property through their father.

16. Section 114 of the Evidence Act, 1872 directs that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. In particular, illustration (d) permits a court to presume that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things shall cease to exist, is still in existence.
17. Since petitioners have also accepted that Yalla Peddaraju, their grandfather, paid *maktha* to 1st respondent and obtained receipts from 2nd respondent till January, 1980, the burden is on petitioners to establish how the tenancy (which is otherwise heritable in view of Section 10(5) of the Act) terminated and how they acquired title to the property. This burden was not discharged by petitioners. Therefore, the Special Officer is not correct in holding that respondent nos.1 and 2 also need to show payment of *maktha* by the petitioners within twelve (12) years.
18. I am also of the opinion that the Special Officer was not correct in relying upon the statement of PW.1 that he could not identify the

petitioners as a ground for coming to the conclusion that there is no landlord and tenant relationship between respondent nos.1 and 2 and petitioners. This is because petitioners have not claimed that they have been in possession of the A.T.C. schedule property under an independent title other than the tenancy of Yalla Peddaraju, and once the petitioners admit that they are grand children of Yalla Peddaraju, by operation of law i.e., Section 10 (5) of the Act, the tenancy devolves on them.

19. That apart, as rightly held by the appellate court, the petitioners never specifically mentioned in the counter that they are in possession and enjoyment of the A.T.C. schedule property within the named boundaries. They have, in fact, pleaded title in respect of different survey numbers. Therefore, they can neither raise the plea of adverse possession nor can they contend that the survey numbers mentioned in their counter are equivalent to the A.T.C. schedule survey numbers.
20. In this view of the matter, I do not find any error of jurisdiction in the order passed by the Appellate Tribunal in A.T.A.No.37 of 2012. Therefore, the Civil Revision Petition is dismissed. No order as to costs.
21. Time is granted to petitioners to vacate the A.T.C. schedule property by January 15, 2016. This exercise shall however be subject to the condition that petitioners file an undertaking within a period of two (02) weeks from the date of receipt of a copy of this order that they will pay all the arrears of *maktha* up-to-date within a period of four (04) weeks from the date of receipt of a copy of this order. In default of either filing of the undertaking or paying the *maktha* within the time prescribed, they shall be liable

to be evicted forthwith.

22. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27.10.2015

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