

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.3971 of 2013 & 547 of 2014

COMMON ORDER :

C.R.P.No. 3971 of 2013

The revision petitioner was the unsuccessful appellant before the revision 7th respondent Joint Collector vide appeal order dated 23.03.2013 in F1/ 4/ 2010, maintained against the revision respondents 1 to 6 of whom from death of the 1st respondent to the revision, his L.Rs impleaded were respondents 2 to 6 before the lower appellate authority itself in the year 2012. The appeal filed was under Section 90(1) of A.P. (Telangana Area) Tenancy and Agricultural lands Act, 1950 (for short, 'the Act') aggrieved by the order dated 15.11.1988 in file No.G/7616/88 passed by the Mandal Revenue Officer, Mahaboobnagar dismissing the application of the petitioner-Buredipally Venkataiah in claiming through his father late Venkanna as protected tenant along with Buredipally Nagaiah, brother of said Venkanna for the lands in S.No.52, Ac.0.35 guntas, S.No.53, Ac.0-31 guntas, S.No.54 Ac.0-31 guntas and S.No.55 Ac.8-01 guntas of Enugonda Village of Mahaboobnagar Mandal and District, with the request to restore the names of the protected tenants supra in the tenancy records in respect of the lands supra.

2) The contentions in the grounds of the revision are that the learned Joint Collector misread himself from the version of the revision respondents 1 and 2 i.e., V.Rama Rao and Harikishan Rao, sons of late Venkateswara Rao of the alleged surrender to them by the tenants during their life time; though they did not produce any proceedings of M.R.O dated 15.11.1988 in file No.G7616/ 1988 in question except filing an endorsement made by the Mandal Revenue Officer and when the revision petitioner applied for certified copy for the same, there was an endorsement by the Tahsildar of no such proceeding is available in their office, which shows said endorsement is a created one and the Joint Collector blindly believed the same instead of summoning the original record from the Mandal Revenue Office to ascertain the genuineness of said endorsement of the M.R.O with file number supra and thereby erred in observing that the petitioner could not prove that his father Venkanna was a joint tenant with Nagaiah @ Nagadu, brother of Venkanna, instead of verifying the Pahani subsequent to Khasra which demonstrate joint cultivation of Venkanna and Nagaiah by mentioning as cultivators in the possessors' column and by entering name of the petitioner-Venkataiah after death of his father Venkanna, that the observation of the Joint Collector of petitioner ought to have made representation for correction of final record of

protected tenant under Rule 24 of the Rules, 1950 though there was no dispute in this regard of joint cultivation by the two brothers of whom Nagaiah since the elder member of the family his name only recorded on behalf of the joint family that does not mean Nagaiah alone is the protected tenant, the Joint Collector should have conducted enquiry with regard to hardship of the petitioner under Section 40 of the Act, 1950 if at all there is any doubt. It is also the contention that the Joint Collector ought to have seen that the revision respondents 1 and 2 want to avail the alleged surrender proceeding in maintaining suit for injunctions in O.S No.215 of 2000 and 280 of 2005, the trial Court disbelieved said endorsement of surrender resulting in dismissal of their suits to say competent civil Court did not believe the same and thereby the Joint Collector should not have believed said surrender and instead ought to have been observed contra and thereby to allow the revision by setting aside the impugned orders of the Joint Collector and that of the Mandal Revenue Officer.

C.R.P.No. 547 of 2014

3) The revision petitioner B.Yadayya is son of late Narasimhulu and said Narasimhulu is no other than son of said Nagaiah @ Nagadu supra and impugning the said order of the Joint Collector the present revision is filed. The contentions

in the grounds of this revision are almost with same and similar contentions in the grounds of C.R.P. No.3971 of 2013 supra. It is also the additional contention that Joint Collector failed to exercise the jurisdiction vested in him under law and the order is vitiated by material irregularity and in ignorance of the findings of the lower Court in O.S. No.215 of 2000 and 280 of 2005 and should have appreciated that the P.T register genuineness is in doubt and it was issued by the Mandal Revenue Officer in the year, 2000 that was filed by respondent No.3 to the revision late Hari Krishna Rao in the civil suit by obtained in the year, 2001 and Joint Collector ought to have been asked explanation from the Mandal Revenue Officer about the erroneous entries made in the original P.T register, which is a permanent one, with no right to tinker and tamper, muchless to make any endorsement, and thereby he should have been suspended said entries, for the same is against the statutory protected tenancy rights, to safeguard said rights from the intention of the Act, 1950 and there can be no correction to the original register after the Act, 1950 after expiry of one year after its coming into force and anything done is contrary to law and the order of the Joint Collector made no whisper about the civil Court findings in this regard, to accept the so called surrender from the entry in the P.T register and the Joint Collector should have

asked for production of the original record of the alleged surrender proceedings dated 15.11.1988 and in the absence of which the lineal descendants of the original protected tenants are entitled to claim the hereditary rights under the Act 40/ 1950 and the Joint Collector should have decided such claim. It is further averred that one K.Peda Narsaiah was the protected tenant of S.No.53, 54 and 55 of total Ac.8-08 guntas of Enigonda village and late B.Nagaiah @ Nagadu was the protected tenant for land in the same survey numbers for Ac.8-09 guntas of same village and between the two families there was no relationship, that too they belong to different communities of backward community and schedule caste (Madiga community) respectively, but for to say the landlord of the protected tenants is by name V.Venkateswara Rao, father of Rama Rao and late Hari Krishna Rao (some of the revision respondents) and K.Peda Narasaiah, it seems surrendered the protected tenancy rights in favour of the landlord supra and the same was recorded in the P.T register and taking advantage of said entries, the landlord colluded with revenue officials in tampering the original P.T registries by inserted name of late B.Venkataiah by giving a slash wherever possible, to make insertions which is apparent with over writings and as a whole to the extent of share of K.Peda Narasaiah was mentioned and subsequently complete extent

was over written on the same words and by inserting name of B.Nagaiah to say the names of Narasaiah and Nagaiah was written by different persons with different pens for earlier writing is dark in colour and the Joint Collector ought to have called for the original P.T register even Joint Collector once chosen to call for, from no response to the same from Mandal Revenue office authorities, the petitioner obtained certified copy for the same and in the meantime the Joint Collector disposed of the appeal which made to prefer the revision and the family members of B.Nagaiah @ Nagadu were cheated by the so called landlords and thereby sought for setting aside the impugned orders of the Joint Collector and the Mandal Revenue Officer by allowing the revision.

4) During the course of hearing of both the revisions supra commonly for disposal, the revision petitioners filed documents viz., C.C of plaint in O.S. No.215 of 2000, affidavit petition and counter affidavit in I.A. No.534 of 2000 and the default dismissal judgment of the suit by the Junior Civil Judge, Mahaboobnagar, besides the enlarged Photostat copies of the P.T register entries at page Nos.73 to 75 and note file before the Joint Collector in the appeal proceedings and proceedings of the Tahsildar, Mahaboobnagar Mandal dated 04.08.2014 in D/ 9692-13, objection petition filed by V.Rama Rao dated 29.01.2015, representation of B.Yadaiah,

S/o.Narasimhulu (revision 6th respondent in C.R.P.No.3971 of 2013) and three photographs and also, leave about petitions for expedite hearing in the two revisions earlier.

5) Heard both sides from the above material at length for common disposal of both revisions and perused the entire material on record.

6) The factual matrix necessary to mention further, leave any repetition of facts covered to some extent above, is that there are two persons by name K.Peda Narsaiah (B.C by community and B.Nagaiah @ Nagadu S.C by community) they were recorded as protected tenants in the permanent tenancy register (for short 'P.T. register') under the Act, 1950. The said Peda Narsaiah surrendered his protected tenancy rights in relation to the land cultivating by him that is not in dispute but for to mention for the clarity sake as also taken in the pleadings and grounds of revision particularly in para No.15 of C.R.P. No.547 of 2014. Coming to B.Nagaiah @Nagadu shown surrendered as protected tenant, the land in his cultivation concerned, same is in dispute, which are the subject matters of the revisions impugning the orders of the Joint Collector supra against the recordings of the Tahsildar in the year, 1988. It is the claim so far as C.R.P. No.3971 of 2013 by B.Venkataiah, S/o.late Venkanna that he is father of Venkanna and Venkanna is no other than younger brother of

Nagaiah supra. It is the claim in C.R.P. No.547 of 2014 by the revision petitioner B.Yadaiah, S/o.late Narasimhulu, no other than 6th respondent to the revision in C.R.P. No.3971 of 2013 that his father Narasimhulu is no other than son of said Nagaiah. The other respondents 3 to 5 in C.R.P. No.3971 of 2013 by names B.Narasimhulu, S/o.Venkanna, B.Adavaiah, S/o.Nagayya and B.Balamma, W/o.Narasimhulu, no other than respondents 1, 4 to 6 of C.R.P. No.547 of 2014 as related to Nagaiah or his brother Venkanna respectively as their ancestors to the claim that they are also the lineal descendants entitled in succession of the hereditary protected tenancy rights under Section 40 of the Act, 1950. The impugned entry in the permanent tenancy register of the surrender by said Nagaiah supra was dated 15.11.1988 vide file No.G/ 7616/ 1988. It is said entry of the factum of surrender of the tenancy rights by Nagaiah of the year, 1988 now in question in seeking to set aside the same and to restore the tenancy rights in claiming by them as grand children of Nagaiah and as son of Venkanna (Venkanna was no other than brother of Nagaiah). Undisputedly Nagaiah died only in the year, 1990 which is subsequent to the entry dated 15.11.1988 of he surrendered the protected tenancy rights. So far as the claim by Venkataiah, S/o.Venkanna in claiming as Venkanna and Nagaiah supra were the brothers, that the

property was recorded in the P.T register in the name of Nagaiah alone as tenant, though it is the joint family of Nagaiah and Venkanna and not exclusive personal protected tenancy rights of Nagaiah. In fact for that there is no entry undisputedly in the P.T register and there is no material and in the absence of which any revenue record showing any possession noting any of the names no way improve the case and even taken for arguments sake of the tenancy is that of the joint family headed by Nagaiah, such a surrender by Nagaiah is itself by the joint family practically and same was not questioned all through for several decades but for since recent past with no worth explanation for all through and any attempt of only recently came to know cannot be countenanced.

7) So far as the surrender of protected tenancy rights concerned, undisputedly procedure is contemplated by conducting proceedings by enquiry before acceptance. Here the entry in question shows surrender is recorded with file name as G/ 7616/ 1988 in the office of the Mandal Revenue Officer, Mahaboobnagar. The entry clearly speaks surrender of tenancy rights, thereby prevention of tenancy rights of K.Peda Narsaiah and B.Nagaiah respectively and once there is a file that was run, what was the result that is recorded in the P.T register of acceptance of surrender covered by the

proceedings of the file. Once the crucial question is whether there was a valid and voluntary surrender or not by Nagaiah as referred supra. Even it is taken as that of joint family headed by Nagaiah that surrender is binding on the joint family and otherwise from the entries once it is personal protected tenancy rights of Nagaiah, same also holds good. Merely because the file under which the enquiry taken place in accepting the surrender by the Tahsildar not traced and a certificate is issued to that effect dated 16.01.2014 in No.D/ 08/ 2014 in favour of Yadaiah, S/o.Narasimhulu of the file is not traced, that does not mean file never in existence and that also one way supports to say the file was in existence though not traced and that substantiates an enquiry was conducted apart from the presumption of all official acts and judicial acts are duly performed as provided so to draw in Section 114 of the Indian Evidence Act, and it is for the person who disputes to rebut by proving contra. The entries in the original register describing for the survey numbers and the extents respectively, the surrender and consequently termination of the tenancy rights pursuant to the above proceedings of the above file supra under Order dated 15.11.1988 that also substantiates to said conclusion. So far as civil suits for injunction filed by the sons of the original landlord V. Venkateswara Rao, by names Rama Rao and Hari

Kishan Rao since died represented by L.Rs in O.S No.215 of 2000 of Rama Rao and 280 of 2005 by Hari Kishan Rao and pending the suit for bare injunction, the temporary injunction applications filed were ended in dismissal for not able to prove possession as per the claim from revenue pahanis show possession contra is not a ground by itself to say the surrender is bogus or the entries in the permanent tenancy register of terminating the tenancy of Nagaiah and K.Peda Narasiah from their said surrender found voluntary on enquiry were not correct. So far as K.Peda Narsaiah's family concerned, undisputedly none challenged the surrender and termination of tenancy and so far as Nagaiah concerned, in his life time he did not challenge as death is next year to the surrender and later even by children of Nagaiah, muchless immediately. There is thus no basis for the claim by Venkanna's son Venkataiah that Venkanna and Nagaiah from being the brothers, it was a joint tenancy, as rightly observed even by the Joint Collector of had there been any such rights of joint tenancy and name of Nagaiah's brother Venkanna, they could have been applied and it was never done in the life time of Venkanna even, muchless with any hereditary rights with any claim of immediately after death of Venkanna by Venkataiah (revision petitioner in C.R.P. No.3971 of 2013 or others) and equally of one of the grand sons of Nagaiah i.e., Yadaiah,

S/o.Narasimhulu, revision petitioner in C.R.P. No.547 of 2014 immediately after Nagaiah by sons of Nagaiah like Narasimham etc., even Nagaiah died in the year, 1989, for no meaning if at all any protected tenancy rights without surrender by Nagaiah and if in subsistence, to claim heritable rights to cause mutated their names by so applying. Apart from it as referred supra, even taken for arguments sake, it is a joint family tenancy entering the name of Nagaiah being elder of the family as its manager including for his brother Venkanna, the surrender by family manager representing the joint family itself is a valid surrender by the family, for nothing more to claim, for no objection raised by Venkanna muchless in his life time as detailed supra.

8) Having regard to the above, there is nothing wrong in the impugned order of the learned Joint Collector for this Court while sitting in the respective two revisions to interfere. Accordingly both the revision petitions are liable to be dismissed.

9) Coming to the expressions placed reliance so far as *M/s.The Shiva Glass Works Co. Ltd V. Their Workmen*¹ it was a case under Industrial Disputes Act what was held is when the lower Tribunal decided the lis on a fact finding with no question of law involved to sit against by appellate Court is

¹ AIR 1959 SC 1236

without jurisdiction. That decision no way helpful to any of the revision petitioners in support of the claims in the revision. Coming to *Rachappa V. Bhumani Hanumaiah*² a single Judge expression of this Court referring to Section 40, 87, 88 and 99 of the Act, what was observed is there is a dispute as to the relationship of the persons as sons of the protected tenant interse, from that the Tahsildar got jurisdiction to enquire as to who are the sons of the protected tenant in considering the heritable rights for the succession not lost; that also no way helpful for the revision petitioners, once there are no heritable rights for existence to the joint family of Nagaiah @ Nagadu for said Nagaiah surrender showing individually as a protected tenant, in his life time as recorded above and discussed above and even taken as that of joint family with the claim that he is the joint family manager that is a sufficient surrender of the joint family rights, for nothing to claim succession by any defendants of any heritable rights, for nothing in subsistence. Coming to the other decision of *Narangi Bai V. Yadagiri Bal Raj @Ausha Balraj*³ single Judge expression of this Court, it came for consideration whether illatum son-in-law was deemed to be adopted into the family of protected tenant, it was answered in positive from Section 40(3) explanation (a) read with

² 2011(4) ALD 212

³ 2011(1) ALD 665

section 38(e)(1) of the Act in ordering restoration of possession to said lineal descendant against the subsequent purchaser of the land from landlord by answering the lis ultimately in the writ petition with the observation that revision is the remedy and not the writ petition but for to say the time taken of 11 years in the pending revision not permitting to dismiss on the technicality of the writ petition won't lie and to direct at that stage to maintain revision. That decision is also of no help for there was no surrender of protected tenancy rights and after death of the protected tenant with subsisting rights since heritable who was the legal heir only came for consideration in answering the same. Coming to the other decision in *Kata Arogyaiah V. Chippa Pentamma*⁴ referring to Sections 89, 90 and 92 of the Act of the revision powers and appeal powers of the Joint Collector and the powers of Tahsildar, it was observed that the remand order passed by the Joint Collector, lower appellate authority is without power but for either to confirm or rescind or modify the order of the Tahsildar. Same also has no application to the facts. Having regard to the above there are no merits in the two revisions even on considering the additional material filed in the revisions.

⁴ 2006(4) ALD 157

10) In the result, both the revision petitions are dismissed. There shall be no order as to costs. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

17.10.2016
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