

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

CIVIL REVISION PETITION No.2340 of 2016

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.23-12-2015 in A.T.A.No.6 of 2015 of the

I Additional District Judge, FAC Tenancy Appellate Tribunal-cum-Principal District Judge at Eluru confirming the order dt.04-05-2015 in A.T.C.No.4 of 2013 of the Special Officer (Tenancy)-cum- Principal Junior Civil Judge, Eluru.

2. The petitioner filed the A.T.C. under Section 16 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 to declare that she is the cultivating tenant of the subject land and for a consequential permanent injunction restraining the respondents from interfering with her alleged peaceful possession and enjoyment over the A.T.C. schedule land. She claimed that under an oral understanding in the year 2005 the land was leased to her for a yearly maktha of Rs.6,000/- per year and that the 1st respondent received Rs.8,100/- towards advance maktha for the lease under a stamped receipt. Later, according to petitioner, the maktha was enhanced to Rs.10,000/- per acre and she claimed to have paid Rs.13,500/- in March, 2011, 2012, and 2013 for the crop years 2011-12, 2012-13 and 2013-14. She also claimed to have obtained loan eligible card for the years

2011 to 2014. She claimed to be raising maize crop every year till date of filing of the A.T.C. and contended that 1st respondent suddenly came to the property and demanded her to vacate it stating that he sold it to the 2nd respondent.

3. The 1st respondent filed a counter denying that he leased the land to any person. He contended that the land was sold by the family members of

1st respondent through registered sale deed dt.30-03-2013 in favour of

2nd respondent and he was inducted into possession. He alleged that the husband of petitioner by name Subba Rao took the 1st respondent for the purpose of marriage alliance, confined him in a mill in Kakulaparru village and obtained his signatures on empty white papers and white papers affixed with revenue stamp under threat; that his mother filed a complaint with Pedavegi Police, who registered a case; he never gave any receipts to the petitioner; there was horse-gram crop in the schedule land and not maize crop; and therefore the A.T.C. should be dismissed.

4. The 2nd respondent filed counter stating that he purchased the A.T.C. schedule land from the 1st respondent, his mother and sister who are the legal heirs of the original owner Ramayya under registered sale deed dt.30-03-2013 and took possession of the land. He contended that 2nd respondent is in continuous

possession and enjoyment of the schedule land and raising crops therein.

5. The petitioner examined herself as P.W.1 and marked Exs.A-1 to A-5. She also examined P.Ws.2 and 3. The 2nd respondent examined herself as R.W.1 and marked Exs.B-1 to B-7. She examined R.Ws.2 and 3.

6. By order dt.04-05-2015, the trial Court dismissed the A.T.C. The Special Officer held that admittedly the 1st respondent is the owner of the property; that the petitioner admitted that there were corrections in Exs.A-1 to A-3 loan eligibility cards and they do not help the case of petitioner to prove the alleged tenancy or possession of the petitioner over the property. It held that Exs.A-4 and A-5 maktha receipts filed by petitioner for the year 2012 and 2013 contained the signatures of 1st respondent and that Exs.A-4 and A-5 were not proved to have been obtained by the husband of the petitioner under force or coercion from the 1st respondent. It observed that in the year 2005, the

1st respondent was aged only about 18 years and at that tender age, it would be difficult that he would have granted the entire property to petitioner on lease; that in fact the 1st respondent is not the sole owner of the entire property and that his mother and his sister had also a share therein; Exs.A-4 and A-5 do not indicate the name of the person to whom the lease was given;

and it is therefore not possible for the 1st respondent alone to grant the property on lease. It also referred to Ex.B-2 and B-5 which are the pattadar pass book dt.02-07-2013 issued by the Tahsildar in favour of 2nd respondent and 1-B and No.3 Adangal for fasli 1420 in the name of 2nd respondent and held that they prove that the 2nd respondent was in possession of the property. It observed that there is no documentary proof to prove the possession of petitioner on the date of filing of the A.T.C. i.e. 27-06-2013, that even P.Ws.1 to 3 stated that as on the date of their evidence, the land was *beedu* land and so their plea that maize crop was raised in the land cannot be accepted. It therefore concluded that petitioner failed to prove that she is the cultivating tenant in possession of the schedule land.

7. Challenging the same, the petitioner filed A.T.A.No.6 of 2015 before the Tenancy Appellate Tribunal-cum-Principal District Judge, West Godavari District at Eluru. The said appeal was dismissed on 23-12-2015. The lower appellate Court held that certain circumstances surrounding Exs.A-4 and A-5 make their execution improbable and except the oral evidence of P.W.1, there is no other evidence to prove them. It also observed that Ex.A-4 is dt.10-03-2012 and Ex.A-5 is dt.10-03-2013 and exactly on the same dates year after year the date of payment is mentioned, but the signatures and other material on the document is not disclosing the date of passing of the said receipts. It held that the

evidence affidavit of P.Ws.2 and 3 clearly indicate that the petitioner had knowledge of the ownership of the subject property by the mother and sister of 1st respondent also and so she cannot rely on the oral lease of 1st respondent alone or receipts said to have been passed by

1st respondent alone. It also observed that the petitioner claimed to be a landless poor person in the A.T.C. but admitted that she and her husband and son had substantial properties close to the subject property. It also held that by the date of the alleged lease in the year 2005, the age of 1st respondent would be only 17 years and this is a circumstance to doubt the validity and existence of the lease in favour of the petitioner. It also observed that there is no proof of possession of petitioner since 2005 although she claimed to be in possession from that date. It held that Exs.B-1 to B-7 would prove the possession of respondents but not the petitioner.

8. Challenging the same, this Revision is filed.

9. Learned counsel for petitioner vehemently contended that the findings of both the Courts below are unsustainable and they are contrary to the evidence on record.

10. He does not dispute that Exs.A-2 and A-3 documents have certain corrections thereon and none is examined to prove those documents. As regards Exs.A-4 and A-5 also, the said documents are dated 10-03-2012 and 10-03-2013, but the

A.T.C. is filed on 27-06-2013 and there is no documentary proof to prove the possession of petitioner subsequent to 10-03-2013. On the other hand, Ex.B-2 pattadar pass book issued by Tahsildar, Pedavegi Mandal in favour of 2nd respondent, Exs.B-5 and B-6 Adangals filed by 1st respondent as well as Ex.B-1 registered sale deed dt.30-03-2013 executed by 1st respondent and his family members in favour of 2nd respondent, indicate the possession of 2nd respondent as well as his title.

11. Both the Courts below have concurrently held that as on the date of alleged lease, the 1st respondent is only 17 years old and also the subject property belongs to the 1st respondent, his mother and his sister. It is difficult to accept that at the tender age of 17 years, 1st respondent was managing the property and granting leases. Therefore Exs.A-1 to A-5 filed by petitioner do not establish the relationship of landlord and tenant between 1st respondent and petitioner. Both the Courts below have concurrently held that the petitioner had not established that she is the cultivating tenant of

1st respondent and that it is the 2nd respondent, who is in fact in possession and enjoyment of the property in question. These findings of the Courts below are based on appreciation of evidence and do not appear to be perverse warranting interference by this Court under Article 227 of the Constitution of

India.

12. Therefore I do not find any merit in the Revision and it is accordingly dismissed. No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 03-06-2016

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