

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.1456 of 2007

JUDGMENT:

The unsuccessful defendants filed this Second Appeal aggrieved by the judgment and decree dated 07.11.2007 in A.S.No.164 of 1989 passed by the District Judge, Krishna, Machilipatnam confirming the judgment and decree dated 17.09.1988 in O.S.No.506 of 1982 passed by the I Additional District Munsif, Machilipatnam.

2) The parties in this appeal are referred as they were arrayed before the Trial Court.

3) The facts in nutshell are thus:

a) The case of the plaintiffs is that 1st plaintiff is the father and plaintiffs 2 to 4 are his sons and they constitute a Hindu joint family headed by 1st plaintiffs as Kartha. They belonged to Gowda community and the same is included in the backward class and they are landless poor cultivating and eking out their livelihood by doing agricultural coolie work. Plaintiffs 1 to 4 have been in possession and enjoyment of the plaint schedule property which originally belonged to Government. 1st plaintiff applied to the State Government for issuance of patta and the Government granted 'D' form patta in favour of 1st plaintiff about 10 years back and since then all the plaintiffs are jointly in possession and enjoyment of the schedule property. Plaintiffs levelled the schedule property and raised paddy by investing huge amount. The plaintiffs were paying land revenue and drainage Cess to the Government. The 1st defendant was pressing

plaintiffs to part with the plaint schedule property and sell it to him for a low price but the plaintiffs refused. Hence, the defendants tried to encroach upon suit property. The plaintiffs got issued a notice to the defendants and the defendants gave reply with false and untenable allegations. After issuing reply notice, during 2nd week of November, 1992, defendants high handedly took away the standing crop raised by plaintiffs and dispossessed the plaintiffs from possession and enjoyment of suit schedule property.

Hence, the suit.

b) Defendant No.1 filed written statement contending that though 1st plaintiff was granted 'D' form patta by the Government, they were not in a position to bring the land under plough and hence 1st plaintiff sold the property to 2nd defendant for Rs.4,200/- and received Rs.2,700/- on 29.08.1980 i.e, on the date of agreement and received another sum of Rs.1,000/- on 08.12.1981. First defendant further contended that 1st plaintiff executed agreement of sale and delivered possession to 2nd defendant on the same day and since then 2nd defendant is in possession and enjoyment of the said land.

c) Originally, the suit was filed against 1st defendant and when the 1st defendant contended in his written statement that his wife purchased the property, she was subsequently added as 2nd defendant.

d) Defendant No.2 filed written statement and contended that she purchased the property from 1st plaintiff under an agreement of sale and enjoying the same since the date of purchase.

e) During the pendency of the suit, 1st plaintiff died and plaintiffs 5 to 10 were brought on record as LR's of 1st plaintiff.

f) Basing on the above pleadings, the trial Court framed the following issues:

1. *Whether the plaintiff is entitled to the injunction as prayed for?*
2. *Whether the suit is bad for misjoinder of parties?*
3. *To what relief?*

The following additional issue was framed.

“Whether the plaintiff lost possession and enjoyment over the schedule property?”

g) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of plaintiffs. On the other hand, DWs.1 to 4 were examined and Exs.B.1 to B.9 were marked on behalf of defendants.

h) On appreciation of facts and evidence, the trial Court decreed the suit on the observation that the contract of sale was not proved and the balance of consideration was not paid and that the limitation period of three years was completed and the scribe of Ex.B.1 was also not examined to prove its contents and hence the transaction under Ex.B.1 was proved to be null and void. The Trial Court ordered for eviction of the defendants holding that their right of possession was not based on any legal document and they did not prefer suit for specific performance within the limitation period of three years.

i) Aggrieved, the defendants filed A.S.No.164 of 1989 before the District Judge, Krishna, Machilipatnam challenging the judgment of the Trial Court. After hearing both sides, the First Appellate Court on 27.06.1997 dismissed the first appeal by confirming the judgment and decree passed by the Trial Court.

j) Challenging the judgment of the First Appellate Court in A.S No.164 of 1989, the defendants preferred S.A.No.737 of 1997 before this Court. This Court by an order dated 21.03.2007 remanded the appeal permitting the defendants to raise the additional pleas, if they are so advised and directed the first appellate Court to give opportunity to both parties relating to the aspect of procedure or other conditions to be satisfied under the provisions of A.P Assigned Lands (Prohibition of Transfers) Act (for short “the Act”) and to decide the matter afresh in accordance with law.

k) Thereupon, the First Appellate Court heard both sides and dismissed the appeal on 07.11.2017 on the observation that as per the provisions of the Act, there was a prohibition to sell the assigned land and hence even if a sale deed was executed by 1st plaintiff in favour of defendants, the same is illegal and void and it further observed that though opportunity was given to the defendants, they failed to produce fresh material or evidence as to the procedure or other conditions that are to be satisfied under the Act.

Hence, the instant Second Appeal by defendants.

4) While admitting the instant appeal, this Court framed the following substantial questions of law:

1) Whether both the Courts below were error in decreeing the suit of the plaintiff in view of Section 3 of A.P. Assigned lands (Prohibition of Transfer) Act, 1977 (for short 'the Act'), without examining the aspect whether the parties to the contract would be bound by the contract and it was only for the Government to take appropriate action in terms of Section 4 of the Act and in such proceedings, the appellant could still plead that he was a landless poor person in terms of clause (5) of Section 3 of the Act?

2) Whether the learned Appellate Court is justified in dismissing the appeal without adjudicating the issue with regard to the jurisdiction of the civil Court even though a procedure is contemplated under the Act?

5) Heard arguments of Sri Kowturu Pavan Kumar, learned counsel for appellants and Sri Narasimha Rao Gudiseva, learned counsel for respondents 2 to 5. Respondent No.1 died vide cause title. Though notice sent to respondent No.6 was served, but there is no representation on his behalf. Appeal against respondents 7 to 10 was dismissed for default vide court order dated 17.08.2015.

6) While admitting that the defendants purchased 'D' form patta lands from the 1st plaintiff, the main plank of argument of learned counsel for appellants/defendants is that it is for the revenue authorities to take action against the defendants for contravening the provisions of the Act if any by resuming the 'D' form patta lands and restoring the same to plaintiffs and

in this regard Civil Court's jurisdiction is expressly barred. Therefore, even if the Courts below found that the defendants purchased 'D' form patta lands from the 1st plaintiff in contravention of the provisions of the Act, they have no jurisdiction to grant decree for possession in favour of plaintiffs. Regarding exclusion of Civil Court's jurisdiction, he placed reliance on the following judgments.

1. Azhar Hasan and others vs. District Judge, Saharanpur and others¹

2. Smt Mendi Mahalakshmi, W/o. Satya Rao and Mendi Parvathi, W/o. Nageswara Rao vs. A.P. State, rep. by District Collector²

He would thus argue that judgments of the Courts below are patently wrong and against the law.

7) Per contra, learned counsel for respondents/plaintiffs argued that Civil Court's jurisdiction to grant a decree for recovery of possession basing on the title of the plaintiffs is not barred and in the process of scrutinizing the title, if the Court happens to come across that the defendants contravened the provisions of the Act, it can, while holding that the defendants by virtue of such contravention acquired no title since the said purchase is void, grant decree of recovery of possession in favour of plaintiffs and civil court's jurisdiction does not oust in that regard.

8) **Questions 1 and 2:** On a perusal of the facts, evidence and law, I find no merits in the contention of appellants. Both the Courts below gave a concurrent finding of fact to the effect that the defendants could not establish the agreement to sell. Be that as it may, even assuming that the

¹ (1998) 3 SCC 246 = MANU/SC/0990/1998

² MANU/AP/0963/2010

defendants purchased the land from 1st plaintiff under Ex.B1—agreement to sell, still the same is null and void in terms of Section 3 of A.P. Assigned lands (Prohibition of Transfer) Act, 1977 as the suit land is admittedly a ‘D’ form patta land of the 1st plaintiff. As per Section 3 of the said Act, transfer of ‘D’ form patta land is void.

Section 3 of the Act reads thus:

“Section 3: Prohibition of transfer of assigned lands:- (1) *Where before or after the commencement of this Act any land has been assigned by the Government to a landless poor person for purpose of cultivation or as a house-site then, notwithstanding anything to the contrary in any other law for the time being in force or in the deed of transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.*

(2) *No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise.*

(3) *Any transfer or acquisition made in contravention of the provision of sub-section (1) of sub-section (2) shall be deemed to be null and void.*

(4) *The Provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a Civil Court or of any award or order of any other authority.*

(5) *Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house-site on the date of such commencement.”*

Thus, a careful scrutiny of Section 3 would show that this Section specifies;

- (i) Where before or after commencement of this Act any land has been assigned by the Government to the landless poor person for cultivation or as a house-site, it shall not be transferred and shall be deemed never to have been transferred and no right or title in such assigned land shall vest in any person acquiring the land by such transfer;
- (ii) An assignee shall not transfer and no person shall acquire any assigned land either by purchase, gift, lease, mortgage, exchange or otherwise and such transfer or acquisition shall be deemed to be null and void.
- (iii) The provisions of this section shall apply in execution of the decree of a Civil Court or any award or order of any other authority.
- (iv) This section shall not apply to a purchase made by a landless poor person in good faith for valuable consideration from the original assignee or his transferee **prior to the commencement of this Act and in possession for cultivation or house-site on the date of the Act.**

Thus, this Section emphatically declares that transfer of an assigned land by the assignee in any of the forms narrated in that section as null and void. The only exception is that if a landless poor person in good faith purchases the land from the original assignee or his transferee prior to the commencement of this Act and in possession of the said property either for the cultivation or as a house-site, such transaction is exempted from the rigor of this section.

9) Then, Section 4 deals with consequences to be followed in case of breach of provisions of Section 3. It lays down that the District Collector or any other officer not below the rank of Mandal Revenue Officer by following due procedure prescribed in the section resume the assigned

land and restore to original assignee or to other eligible landless poor person. Sub-Section (2) specifies any order passed under Section 4(1), 4-A or 4-B shall be final and shall not be questioned in any Court of law and no injunction can be granted by any Court in respect of any proceedings taken or about to be taken by any officer or authority or Government in pursuance of any power conferred by or under this Act. The section further lays down that where any assigned land is in possession of other than the original assignee or his legal heir, it shall be presumed, until the contrary is proved there is a contravention of provisions under Section 3(1).

10) Thus, a cumulative reading of Sections 3 and 4 of the Act would give an understanding that it is only the order passed under Section 4(1), 4-A or 4-B is exempted from the scrutiny of the Civil Court. It is *pro tanto* exclusion but not the total exclusion of jurisdiction of the Civil Court. In other words, as stated supra, if the revenue authorities passed an order exercising power under Section 4(1), 4-A or 4-B, such an order cannot be challenged in the Civil Court. Similarly, when the authorities are about to initiate proceedings in pursuance of the power conferred by this Act upon them, such intended action also cannot be questioned before the Civil Court in advance. In my considered view, the said *pro tanto* exclusion of jurisdiction does not mean, Civil Court's jurisdiction is totally barred to grant general reliefs of declaration, possession, injunction or some other reliefs to an assignee without contravening the provisions of this Act.

11) As rightly argued by the learned counsel for respondents, when an assignee filed a suit for injunction or for declaration of his title or recovery of possession in respect of his assigned land before Civil Court and during the course of enquiring into his title, if it is brought to the notice of the Court that the defendant in contravention of Section 3 of the Act acquired title to the assigned land, there is nothing would prevent Civil Court to hold that the defendant is guilty of contravening the provisions of this Act and declare that he does not get title thereby and consequently restoring possession to the plaintiff. It should be reminded that what is prohibited by Section 4(1) is if an order was already passed under Section 4(1), 4-A or 4-B or proceedings are about to be taken by revenue authorities in pursuance of the power conferred by the said Act upon them, such an order or such intended action cannot be challenged in the Civil Court. Instant case is not of such a nature. On the other hand, admittedly the defendants purchased the assigned land from the 1st plaintiff only after commencement of this Act and not prior to that and the said transaction is not saved under Section 3(5) of the Act. Nextly, the revenue authorities have not so far initiated any action nor it is brought to our notice that they intended to take any action under Section 4 of the Act so as to exclude the jurisdiction of the Civil Court. Thus, in the present circumstances, the assumption of jurisdiction by the Civil Court will only in furtherance of the avowed object of the Act but not in its derogation. Therefore, the argument of learned counsel for appellants cannot be accepted.

12) In similar circumstances, a learned Judge of this Court in *Kottam Pullaiah vs. Harijan Panganti Eaga Balaiah*³ observed that Civil Court's jurisdiction is not barred either under Section 4(2) or 8(1) of the Act. In that case, the plaintiffs who are the assignees of the Government land filed a suit for declaration of title and injunction against the defendants. The suit was decreed and during the execution stage, it appears, the defendants challenged the jurisdiction of the Civil Court to entertain the suit on the contention that its jurisdiction is bared by the provisions of Section 4(2) and 8(1) of Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977. In that context, while referring to Section 4(1) and 8 of the Act, the learned Judge observed that granting declaration and injunction does not mean usurping the jurisdiction of the revenue authorities contemplated under Section 4(1) or 8 of the Act and it is not a question of Civil Court lacking inherent jurisdiction to pass the decree. Therefore, the argument of the appellants cannot be sustained.

13) It must be said that the judgments relied upon by the appellants will not advance their case.

a) In **Azhar Hasan's** case (1 supra) what was observed by the Honourable Apex Court was that the Civil Court cannot decide who should have been recorded in possession of the land in dispute and that was the matter for the revenue authorities to determine and Civil Court would have no jurisdiction in that matter. Needless to emphasize such is not the situation here. As already stated, there is no usurpation of the

³ 2003 (1) ALD 805

power of the revenue authorities conferred either under Section 4 or 8 of the Act.

b) In *Mendi Mahalakshmi*'s case (2 supra) it is observed by a learned single Judge of this Court that a civil suit is barred in respect of the question as to the validity of the assignment made under this Act and there is no provision under the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 empower the Civil Court to adjudicate upon the said question. Therefore, the jurisdiction of Civil Court is impliedly barred.

c) It should be noted that in the present instance, the dispute is not with regard to validity of the assignment made in favour of the plaintiffs. Therefore, the said decisions have no application to the facts of the case.

The questions are answered accordingly.

14) In view of the above findings, there are no merits in this appeal and the same is accordingly dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 03.11.2017
Scs/Murthy