HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No. 1545 of 2007

Date : 28.12.2017

Between :

Kandula Venkataramana S/o late Suryanarayana
57 yrs R/o Seethammapet village, Ranasthalam mandal
Srikakulam district and others

Petitioners

And

Bavaraju Bhogiraju S/o Late Ramana
62 yrs R/o Seethammapet village, Ranasthalam mandal
Srikakulam district and others

Respondents

The Court made the following:

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ORAL ORDER:

Petitioners herein claim to be owners of land mentioned in schedule appended to ATC No. 12 of 2000 on the file of the Special Officer cum Principal Junior Civil Judge, Srikakulam. They filed ATC 12 of 2000 under Section 13 of A.P. (A.A.) Tenancy Act to evict the respondents from the petition schedule land and to put petitioners in possession of the same. On behalf of the petitioners, 3 witnesses were examined and 4 documents were marked; on behalf of respondents 5 witnesses were examined and 7 documents were marked. On through evolution of the evidence on record, the Special Officer found favour with the contention of the petitioners and held that petitioners had successfully established their case. The stand of the respondents that they are the owners of the suit schedule land and are not tenants was rejected. Allowed the petition with costs and directed the respondents/tenants to vacate petition schedule property within three months.

2. Aggrieved thereby, respondents filed ATA 4 of 2002. In appeal, the Appellate Authority discarded the stand of the petitioners regarding their claim of ownership of the petition schedule property. The Appellate Authority held that the sale deed dated 10.5.1940 marked as Ex.A-1 does not disclose the boundaries of the property; that the property is not identifiable; whereas, as claimed by the respondents, by way of Ex.R-1 and R-2 sale deeds, they have purchased the same land and as owners of the land, they are in possession. In the absence of clear boundaries of the property claimed by the petitioners, it cannot be held that the respondents are in occupation of their land, more so, in the capacity as tenants, therefore reversed the decision of the Special Officer. Aggrieved by the decision of the Appellate Authority, this revision is preferred by petitioners.

3. Heard learned counsel for petitioners Sri M Radha Krishna and leaned counsel for respondents Sri A RAvi Shankar.

4. By taking through the decision of the Appellate Authority and evaluation of evidence by Appellate Authority vis-a-vis evaluation of evidence by Special Officer, learned counsel for petitioners points out that the Appellate Authority has ignored the deposition of witnesses more particularly the deposition of R.W-1 in his cross examination, who is second respondent, and findings arrived at by the Appellate Authority are contrary to the evidence on record. Since the Appellate Authority has not considered the evidence on record properly and no assessment was made on the crucial evidence adduced by R.W.-1, the matter be remanded to the Appellate Authority for consideration on the issue afresh duly taking note of the evidence on record.

5. Learned counsel for respondents submit that as held by the Appellate Authority Ex.A-1 do not contain boundaries and the property claimed by the petitioners is not identified whereas respondents purchased the properties by way of Exs.R1 and R2 and they are in possession of the land owned by them and not as tenants of petitioners. He further submits that in proof of ownership land revenue receipts are marked as R3 to R7. He therefore submits that Appellate Authority has correctly assessed the evidence on record and has come to the correct conclusion and does not warrant remitting matter to the Appellate Authority.

6. The basic facts are not in dispute. Petitioners claim as owners of the land covered by Ex.A1 sale deed dated 10.5.1940. According to them respondents were inducted as tenants and have been in occupation of the land as tenants and they have defaulted in payment of the lease amount. According to respondents, the land claimed by the petitioners is not the same land which is in possession by the respondents and they are in occupation of the land owned by them having purchased the same by way of registered sale deed marked as

Ex.R1 and R2. They also sought to rely on revenue receipts to claim that the land belonging to them and they are paying the land revenue as owners. The Special Officer observed that R.W.1 admitted that Ex.R1 and R2 do not relate to the petition schedule land and that the revenue receipts Ex.R3 to R5 do not relate to the petition schedule property. It is seen from the order of the Appellate Authority that there is no discussion about the deposition given by R.W.1 more particularly his statement in the cross examination. Without analyzing the material available on record, the Appellate Authority holds that the Special Officer erred in disbelieving the evidence of R.Ws.1 to 5 and also discarding the evidence of R1 and R2.

7. This Court is of the opinion that having regard to the error committed by Appellate Authority in not properly analyzing evidence on record, the matter be remitted to the Appellate Authority for consideration of the appeal afresh after affording due opportunity to the respective parties.

8. Accordingly, the order of the Appellate Authority in A.T.A. No. 4 of 2002 dated 20.2.2007 is set aside and matter is remitted to the Appellate Authority for afresh consideration on merits by affording due opportunity to respective parties. Accordingly, the revision is allowed. Having regard to the fact that ATA No. 4 of 2002 is of the year 2002, the Appellate Authority is directed to consider and dispose of the appeal expeditiously, preferably within a period of two months from the date of receipt of copy of this order. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 28.12.2017
TVK

Note: Issue copy in one week

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