

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO
C.R.P.Nos.5151, 5153,5270 and 5590 of 2011

COMMON ORDER

These four revisions but for CRP No.5153 of 2011 are preferred by the self-same person by name Repaka Lakshmudu-petitioner in ATC Nos.7,8 and 10 of 2003 on the file of the Spl.Officer(Tenancy)-cum-Junior Civil Judge, palakol, West Godavari District against respective respondents in the three ATCs supra by names Dasika Nagapadmini, Heramba Viswanatha Surya kumar @ Sandeep and Suryapradeep, who are no other than wife and sons of Dasika Gopalakrishna-respondent in the 4th ATC No.9 of 2003 filed by Adari Nageshwara Rao-the petitioner in CRP No.5153 of 2011.

2. The grounds of revisions common to avoid repetition, in nutshell in C.R.P.Nos.5151, 5270, 5590 and 5153 of 2011 are that orders dt.19.09.2011 of the appellate authority-cum-Prl.District Judge, West Godavari at Eluru in ATA Nos.1 to 4 (against said ATC Nos.7 to 10 of 2003, dt.28.01.2009),is contrary to the law, without verifying record and without proper finding as to whether the petitioners respectively are Tenants of the respective properties under the respective respondents also based on conjectures and surmises and passing dismissal orders concurrently though the respective respondents never in possession and were admitted to possess the respective petitioners as claimed and the respondents respectively did not discharge their burden shifted on them from the revision petitioners filed documents respectively showing as cultivating Tenants and thereby the revisions are to be allowed and the observation concurrently that the amounts sent by Demand Drafts with Ex.A.4 notice respectively in all the ATCs were encashed or not concerned,

there is no proof by examination of bank officials is erroneous and for all the reasons, the revisions are to be allowed by setting aside the concurrent findings in the dismissal orders in all the four matters by the Courts below by declared the respective revision petitioners as Tenants under respective revision respondents in all the 4 cases.

3. In deciding the revisions governed by the Act, 18 of 1956 amended by Act, 39 of 1974 as per Section 4 every Landlord and his cultivating Tenant shall come to an agreement in regard to the form of tenancy, and in particular as to whether the rent shall be paid in the form of a share in the produce or in the form of a fixed rent in kind, or in the form of a fixed rent in cash. Such agreement shall not be liable to be altered except by mutual agreement of the parties. As per Section 2© of the Act, cultivating Tenant means a person who cultivates by his own labour or by that of any other members of his family or by hired labour under his supervision and control, any land belonging to another under a tenancy agreement, express or implied, but does not include a mere intermediary. As per Section 2(gg) personal cultivation means cultivation of a land by a person on his own account by his own labour or by labour of any member of his family or by servants on wages payable in cash or kind or both but not in crop share or hired labour, under his personal supervision or under the personal supervision of any member of his family and the expression cultivate personally shall be construed accordingly. As per Section 10 sub-section 2, every lease entered into between a Landlord and his cultivating Tenant on or after the commencement of the amended Act 39 of 1974 shall be for a minimum period of six years and every such lease shall be in writing and shall specify the holding, its extent and the rent payable therefrom, with such other particulars as may be

prescribed. The stamp and registration charges for every such lease shall be borne by the Landlord and the cultivating Tenant in equal shares. It is such lease after expiration of such period as per Section 10(3) of the Act renewable successively in same terms and conditions. All rights of cultivating Tenant under Section shall subject to provisions of Sections 12 and 13, be heritable. Sections 12 and 13 speak of resumption of possession of the tenancy land by owner for personal cultivation and eviction of Tenant by termination of tenancy. Section 13 runs with non-obstante clause for eviction for default in payment of rent within a period of one month from date stipulated in the lease deed and in the absence of such stipulation within one month from date on which rent is due according to the usage of locality and in case rent payable in the form of share in the produce, when fail to deliver the produce at the time of harvest. The eviction can be even for acts guilty of neglect or destructive of permanently injurious to land, when sub-let, violated any conditions of tenancy regarding to use of the land or willful denial of Landlord's title or fail to comply with any order passed by the Spl. Officer or the District Court under the Act.

4. Though the A.P.Registration Act Section 17 amended by Act 4 of 1999 w.e.f. 01.04.1999 incorporating clauses 'f and g' of every lease and every sale agreement must be compulsorily registerable, earlier to it if the lease is for one year or more, it is required to be registered, leave about every transfer of interest in immovable property of Rs.100/- or more must be compulsorily by registered document.

5. The oral leases set up in the four revisions supra were during 1989 to 91. By then even as per Section 10(2) of the Tenancy amended Act 39 of 74 referred supra came into force and mandates the lease must be in writing and duly stamped and registered and the charges to

be borne equally for that by Landlord and Tenant incorporating the terms of the lease. If at all there is a written document, even not registered once duly stamped, question of considering for collateral purpose as to nature of possession for terms of the document otherwise, cannot be looked into can be considered and in any of the four cases it is not even any such plea nor any written lease produced.

6. In three of the cases, P.W.1 is self-same petitioner by name Repaka Lakshmodu and the petitioner in the 4th case Adari Nageshwar Rao did not even choose to come to witness box in his case nor even as a witness in the other cases but for said Repaka Lakshmodu also stood as a witness in the case of Adari Nageshwar Rao and P.W.2 in all the four cases is self-same person Godugupati Muthyal Rao. Said P.W.2 categorically deposed in his cross-examination that he does not know about any land disputes. D.Gopalakrishna who is respondent in ATC No.9 of 2010 deposed in all the four cases as R.W.1 for being husband and father of the other three respondents of the other three cases. There were exchange of notices and telegram notices only in the year 2002. The Tenants did not file so far as Adari Nageshwar Rao concerned, even any scrap of paper to show that he received any benefits as Tenants by cultivating the land like any loan from society or bank or entering of his name in the revenue records as person in cultivation at least in annual adangals nor any payment of rent and obtaining of receipt for cash or kind. So far as Repaka Lakshmodu, his mere filing of one or two land revenue receipts of the year 2002 in ATC No.7, with no any such receipts in other cases even as an improvement to the case of Adari Nageshwar Rao no way improve the case, for the reason of already by April, 2002 there were exchange of notices. P.W.1 Repaka Lakshmodu in fact deposed about he worked as operator in M/s

Dasika Chemical Industries and he issued notice to Dasika Gopalakrishna-its Managing Director regarding payment of wages due and disputes arose after his services terminated. He even deposed in cross-examination of not able to say survey numbers, extents or boundaries of any of the properties covered by the four petitions of so called lease. He deposed that the Landlord has to pay taxes. Once such is the case, the question of his paying anything in April, 2002 does arise even as rightly pointed by the Courts below. The Adangals produced by the respondents show the property stands in their names as under personal cultivation and the certificate issued by the VRO of the village concerned also proves the same though said certificate has no absolute probative value to take as proved of Landlord's personal cultivation in 100% proof, same lends support as corroborative piece and substantiates the adangal entry and the contest of the respondents vis-à-vis evidence of R.W.1 in all the four cases on even re-appreciation of facts to say the finding of the tenancy tribunal dismissing the so called oral tenancy in all the four cases for nothing in existence and rightly confirmed by the appellate tribunal no way unsustainable and outcome of any ill-appreciation and as such there is nothing to interfere with said concurrent findings supported by discussion with reasons in arriving the sound conclusions.

7. In the result, all the four Civil Revision Petitions are dismissed by confirming the concurrent findings of the Courts below. Consequently, miscellaneous petitions, if any, pending in these revisions, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:02.04.2018
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