

NELAPATLA RAMAIAH & ORS.
v.
KAMATAM BIKSHAMAIAH & ORS.
(SLP (Civil) Nos. 24089 of 2005)

DECEMBER 15, 2009

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Adverse Possession:

Possession of agricultural lands transferred by original holder under agreements for sale in 1961 – Lands further transferred by purchasers and again by second purchasers – Original land-holder filing suit for injunction, declaration and for possession in 1991 – HELD: In view of the plaintiff losing possession and properties changing hands in series of transactions and plaintiff not objecting to agreements for sale, High Court correctly held possession of defendants as adverse to interests of plaintiff – As regards applicability of s. 47 of Hyderabad Tenancy and Agricultural Lands Act, it cannot be said that subsequent occupants claimed possessory rights under original agreement for sale dated 22.5.1961 – Hyderabad Tenancy and Agricultural Lands Act, 1950 – s. 47.

The original land holder by agreements for sale dated 25.5.1961 and 15.4.1962, agreed to sell certain agricultural lands. The physical possession was handed over to the purchasers. On 5.2.1968 the purchasers further agreed to sell the properties and parted with possession of the lands. The second purchasers under agreements for sale executed in the year 1969, further transferred the possession of some of the lands to defendants 1-3. There arose some dispute regarding cultivation of the said land. The original holder of the lands filed a suit initially for injunction and subsequently

A amended the plaint claiming relief of declaration of title
and delivery of possession of the suit lands. On his death,
plaintiffs 2 to 9 were substituted. The suit was dismissed
by the trial court but decreed by the first appellate court
holding that all the transactions were hit by ss, 47 and
B 50-B of the Hyderabad Tenancy and Agricultural Lands
Act, 1950; and that the plaintiffs continued to be in
possession of the suit lands through the defendants who
did not acquire any right thereon and their possession
was merely permissive in nature. However, the High
C Court, in second appeal, set aside the judgment and
decree passed by the first appellate court holding that
possession of beneficiaries of various transactions was
adverse to the interests of the plaintiffs and the transfers
were not affected by ss. 47 and 50-B of the Act. It was
D further held that s.47 stood repealed even before 1969;
and that even otherwise, the provisions of the Act which
were applicable between landlord and tenant, had no
application in so far as third parties were concerned.
E Aggrieved, the plaintiffs filed the petition for special leave
to appeal. A contempt petition was also filed.

Dismissing the petition for special leave to appeal as
also the contempt petition, the Court

F HELD: 1.1. That there were a series of transactions
involving the suit lands after the original plaintiff executed
the agreement for sale on 25.5.1961 and lost possession
thereof, is not disputed. It is also not disputed that the
plaintiffs had not at any point of time objected to the
agreements for sale entered into after 25.5.1961 despite
G the same being adverse to their interests. The High Court
correctly held that the possession of the defendants was
adverse to the interests of the plaintiff. [Para 15] [479-H;
480-A-B]

H 1.2. As to the question of applicability of s.47 of the
Hyderabad Tenancy and Agricultural Lands Act, 1950 to

the several transactions which had taken place with regard to the plaint schedule properties, it cannot be said that possession of the lands could be traced back to the original agreement for sale dated 25.5.1961 and all the subsequent occupants claimed possessory rights under the original agreement for sale dated 25.5.1961. [Para 16] [480-C-D]

1.3. In the circumstances, there is no reason to interfere with the judgment and decree of the High Court. Consequently, the notice issued on the contempt petition is discharged. [Para 17] [480-D-E]

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 24089 of 2005.

From the Judgment & Order dated 20.9.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in S.A. No. 648 of 2004.

WITH

Conmt. Pet. (C) No. 110 of 2006.

P.S. Narasimha, M. Srinivas R. Rao, John Mathew, Abid Ali Beeran, P. Paramshwar, Roshmana for the Petitioners.

Chava Badri Nath Babu, Renu Tyagi, Bimal Roy Jad for Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. This SLP is directed against the judgment and order dated 20th September, 2005, passed by the Andhra Pradesh High Court in Second Appeal No.648/2004, allowing the same and setting aside the judgment and decree dated 29.3.2004, passed by the 2nd Additional District Judge (Fast Track Court-I), Khammam in A.S. No.17/2002. By its judgment, the First Appellate Court had reversed the judgment and decree dated 21.8.1999 passed by the Senior

A Civil Judge, Kothagudam, being O.S. No.54 of 1991, dismissing the suit.

B 2. Initially, the suit was filed for injunction simpliciter before the learned District Munsif, Yallandu. Subsequently, the plaint was amended to include the relief for declaration of title and delivery of possession of the plaint schedule property. During the pendency of the suit the first plaintiff died and his legal representatives were brought on record as the plaintiff Nos. 2 to 9. Subsequently, the plaintiff No.9 also expired.

C 3. The case made out in the plaint by the plaintiff was that he was the owner and possessor of the suit scheduled lands and the defendants had no right, title and interest therein, nor did they have any right to demand that they be allowed to cultivate the land on a crop-sharing basis. The dispute which D had arisen regarding the cultivation of lands in question resulted in the filing of the suit.

E 4. From the facts as disclosed, it appears that on 25.5.1961 the original plaintiff agreed to sell 3.01 acres in Survey No.87 and 92 and 3.13 acres in Survey No.3.08 to one Bathula Veeraiah and Enika Pitchaiah under an agreement for sale and made over physical possession of the lands in question to the said two persons. Subsequently, on 15th April, 1962, the original plaintiff also sold another portion of the plaint schedule property to the said two persons under another F agreement for sale and made over physical possession of the said lands to them. Consequently, from the said two dates, the original plaintiff was out of possession of the plaint schedule property.

G 5. On 5th February, 1968, Bathula Veeraiah and Enika Pitchaiah agreed to sell 0.37½ acres of land in Survey Nos.284 and 292, 3.01 acres out of Survey No.87 and 92 and 3.13 acres out of survey No.308, forming item Nos. 1, 2 and 3 of the suit schedule property to M/s Yedlapalli Ramaiah and Royalla H Laxmaiah under an agreement for sale and made over physical

possession of the suit lands to the intending purchasers who took possession of the suit properties. On 15.8.1969 Yedlapalli Ramaiah and Royalla Laxmaiah agreed to sell item No.1 of the plaint schedule property to the 2nd defendant, the respondent No.8 herein, under an agreement for sale and delivered physical possession of the suit lands to him. On the same day, the said Yedlapalli Ramaiah and Royalla Laxmaiah also agreed to sell 2.27 acres in Survey No.92 and 0.14 acres in Survey No.87, in favour of the 1st defendant the appellant No.1 herein, under an agreement for sale and delivered physical possession of the lands to him. Since then the 1st appellant is in possession of the 1st item of the plaint schedule property. By yet another agreement for sale Yedlapalli Ramaiah and Royalla Laxmaiah agreed to sell 1.22 acres in Survey No.308 to the wife of the defendant No.3, the appellant No.2 herein, under an agreement for sale. The defendant Nos. 4 and 5, namely, the appellant No.5 and respondent No.9, are in possession of the remaining 1.22 acres in Survey No. 308.

6. As indicated hereinabove, the suit was initially dismissed, but was decreed by the 1st appellate Court on the finding that all the various transactions were hit by Sections 47 and 50B of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as "the 1950 Act"). It was held that the plaintiffs continued to be in possession of the lands in question through the defendants who had not acquired any right to the lands and their possession therein was merely permissive possession.

7. The High Court allowed the Second Appeal upon holding that the possession of the beneficiaries of the various transactions involving the land was adverse to the interest of the plaintiffs and the said transfers were not effected by the provisions of Sections 47 and 50B of the 1950 Act.

8. The High Court took note of the fact that Section 47 of the Act had been repealed from the statute book even before 1969 and even otherwise the provisions of the Act are

A applicable between landlord and tenant and have no application insofar as third parties are concerned. Accordingly, the High Court held that the transactions were hit by Section 47 of the 1950 Act and consequently Section 50B was also not required to be invoked. The High Court observed that the original plaintiff had lost his possession in the land on 25.5.1961 when he executed the agreement for sale and made over possession of the lands in question to the intending purchaser. Thereafter, possession changed hands several times. It was observed that had the defendants claimed directly through the original plaintiff No.1 under the agreement of sale dated 25.5.1961, it could always be said that they were in permitted possession and not in adverse possession which was, however, not the case as far as the suit properties were concerned, since possession had changed lands at least twice and at least from 15.8.1969 till the date of filing of the suit it could be contended that the defendants were in adverse possession of the properties as far as the plaintiffs were concerned.

E 9. The substantial question of law framed in the Second Appeal as to whether the transactions in question were hit by Sections 47 and 50B of the 1950 Act and whether the plaintiffs were entitled to a decree as prayed for, were, therefore, answered by the High Court in the Second Appeal in the negative.

F 10. On behalf of the petitioners, it was sought to be pointed out that the High Court had erred in reversing the judgment and decree of the first Appellate Court on the erroneous premise that the possession of the defendants in the suit were adverse to the interests of the plaintiffs, since all the transferees derived their claims to the lands through the petitioner. It was urged that it was on account of the first Agreement to Sell dated 25.5.1961 that the subsequent occupants of the land acquired possession thereof. Their claim, therefore, had to be traced from the said Agreement for Sale dated 25.5.1961 and not on the basis of

the Agreements for Sale executed in their favour subsequently. It was urged that the High Court had committed an error of law in holding that the possession of the defendants was adverse to that of the plaintiffs and permissible in nature.

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11. Even on the question of the applicability of Sections 47 and 50B of the 1950 Act to the transactions relating to the suit lands after the initial agreement for sale, it was contended on behalf of the petitioners that since the defendants derived the right, if any, to possess the suit lands from the original plaintiff, the question of a third party interest did not arise, and, accordingly, the High Court was wrong in holding that the transactions were not hit by Section 47 of the 1950 Act.

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12. It was, therefore, urged that the judgment and decree of the High Court was liable to be set aside.

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13. Learned counsel for the respondents, on the other hand, strongly supported the decision of the High Court and submitted that the same did not warrant any interference. It was submitted that there was no dispute that the suit property changed hands at least twice after the initial Agreement for Sale dated 25.5.1961, which in itself was an indication that such possession was hostile and adverse to the interest of the plaintiffs. The High Court, could not, therefore, be faulted in arriving at the finding that the possession of the defendants was adverse to that of the plaintiff and not permissible as submitted on behalf of the plaintiffs.

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14. It was also submitted that the High Court had correctly interpreted the provisions of Section 47 of the 1950 Act in their application to the facts of the instant case and did not call for any interference.

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15. We have carefully considered the submissions made on behalf of the parties and are unable to accept the submissions advanced on behalf of the petitioners. That there were a series of transactions involving the suit lands after the

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- A original plaintiff executed the Agreement for Sale on 25.5.1961 and lost possession thereof, is not disputed. It is also not disputed that the plaintiffs had not at any point of time objected to the Agreements for Sale entered into after 25.5.1961 despite the same being adverse to their interest. The High Court, in our view, correctly held that the possession of the defendants was adverse to the interests of the plaintiff.

16. As to the question of the applicability of Section 47 of the 1950 Act to the several transactions which had taken place with regard to the plaint schedule property, it is difficult to accept the submissions made on behalf of the petitioner that since possession of the lands could be traced back to the original agreement for sale dated 25.5.1961, it must be held that all the subsequent occupants, claimed possessory rights under the original Agreement for Sale dated 25.5.1961.

17. Such being the case we see no reason to interfere with the judgment and decree of the High Court. The Special Leave Petition is, therefore, dismissed, but without any orders as to costs. Consequently, the notice issued on the Contempt Petition is discharged and the Contempt Petition is also dismissed.

R.P.

Special Leave Petition and
contempt petition dismissed.