

APHC010432052018



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

WEDNESDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL MISCELLANEOUS APPEAL NO: 552/2018

Between:

1. PYDALA RAMANA REDDY DIED AS PER LRS 2 TO 5, S/O. NARAPA REDDY, AGED ABOUT 60 YEARS, HINDU, R/O. RAMACHANDRAPURAM VILLAGE, KATTUBADIPALEM POST, BUTCHIREDDYPALEM MANDAL, S.P.S.R., NELLORE DISTRICT.
2. PYDALA KRISHNA REDDY, S/O.LATE. RAMANA REDDY,, AGED ABOUT 57 YEARS, R/O. D.NO.4/4, RAMACHANDRAPURAM, KATTUBADIVARIPALEM POST, VAVVERU, SPSR NELLORE DISTRICT, ANDHRA PRADESH.
3. BOREDDI PADMAVATHI,D/O. LATE PYDALA RAMANA REDDY,, AGED ABOUT 55 YEARS, R/O. VEERNAPALEM POST, B.C. REDDY PALEM,SPSR NELLORE DISTRICT.
4. PICHALA SAROJANAMMA, W/O. RAMACHANDRA REDDY,, AGED ABOUT 54 YEARS, R/O. WILLIAMS PETA, NAGAMAMBAPURAM, BUCHIREDDIPALEM, SPSR NELLORE DISTRICT.
5. G. VARALAKSHMI, C/O. PYDALA KRISHNA REDDY, AGED ABOUT 49 YEARS, R/O. D.NO.4/4, RAMACGHANDRAPURAM, KATTUBADIVARIPALEM POST, VAVVERU, SPSR NELLORE DISTRICT, ANDHRA PRADESH.

PETITIONERS 2 TO 5 ARE BROUGHT ON RECORD AS LR OF THE DECEASED 1ST PETITIONER VIDE COURT ORDER DATE 09.02.2024 IN IA.NO.3/2023.

...APPELLANT(S)

AND

1. THE ASSISTANT COMMISSIONER, ENDOWMENTS DEPARTMENT, NELLORE, S.P.S.R., NELLORE DISTRICT.
2. SRI BRAHMANANDESWARA SWAMY TEMPLE, BUTCHIREDDYPALEM VILLAGE AND MANDAL, S.P.S.R., NELLORE DISTRICT, REP. BY ITS FOUNDER TRUSTEE.

...RESPONDENT(S):**Counsel for the Appellant(S):**

1. GHANTA SRIDHAR

Counsel for the Respondent(S):

1. T VENU GOPAL SC FOR ENDOWMENTS (RAYALASEEMA REGION)
2. GP FOR ENDOWMENTS (AP)

The Court made the following:

THE HONOURABLE SMT JUSTICE V.SUJATHA**CIVIL MISCELLANEOUS APPEAL NO: 552/2018****J U D G M E N T:**

1. This Civil Miscellaneous Appeal (for short CMA) has been preferred by the unsuccessful Respondent aggrieved by the Order and Decree dated 23.05.2018 in O.A.No.557 of 2012 passed by the Member, A.P Endowments Tribunal, Amaravathi at Pedakakani.

For the sake of convenience and to avoid confusion, the parties hereinafter be referred as they were arrayed before the Tribunal i.e., Respondents as Petitioners and appellants as Respondent(s).

2. The Petitioner No.1 being the Assistant Commissioner, Endowments Department, Nellore, S.P.S.R Nellore District, Petitioner No.2 being temple i.e., Sri Brahmanandeswara swamy Temple, Butchireddypalem Village & Mandal, S.P.S.R Nellore District, Represented by its Founder Trustee, filed an application under Section 83 of the A.P Charitable and Hindu Religious Institutions and Endowments Act 30 of 1987 for evicting the Respondent and directing him to vacate and handover the Petition schedule property to the 2nd petitioner in O.A.No.557 of 2012.

3. Brief averments of the Application in O.A.No.557 of 2012 are that:- the respondent is in illegal and unauthorized occupation of the said land without obtaining any approved lease orders in his favour from the competent authority of

Endowments Department. The respondent previously paid a paltry sum of Rs.800/- for the entire scheduled land and now paying Rs.12.000/- per annum for the entire land. The said land would fetch at least an amount of Rs.85,000/- per annum @ Rs. 10,000/- per acre, if leased out in public auction. Previously, when the Government proposed to acquire the said land, the respondent got filed W.P.No.14211/1994, before the Hon'ble High Court seeking for declaration that the action of the respondent to sell the land which is in his occupation as Tenant without giving option to him to purchase the same, as illegal, arbitrary and for a direction to sell the land to him at market value. But the said Writ Petition was disposed of while recording the submission made by the Government pleader that the said proposal to acquire the scheduled land is dropped as the land is not required for the purpose of providing house sites to the weaker sections of the society. The Hon'ble High Court made it clear that since there is no valid lease in favour of the respondent, the same will not preclude the respondents therein to take steps to auction the said lands in accordance with law. The 2nd petitioner issued a registered notice dt.24.03.2012 to the respondent calling upon him to vacate and handover possession. The same was received by the respondent and got issued a reply dt.24.04.2012 with untenable grounds. Hence, this petition was filed.

4. The respondent filed counter stating that the respondent is a tenant for the petition scheduled land and he is a small farmer and he has no other

landed property and he has been cultivating the scheduled land by paying proper maktha to the petitioners regularly, without fail. The respondent made improvements to the petition scheduled land by incurring so much of expenditure and prayed for dismissal of the petition.

5. Basing on the pleadings of both parties, the following issues were framed for trial by the Tribunal:

- 1) Whether the respondent is in unauthorized occupation of petition scheduled property as an encroacher U/s 83 of the Act 30/1987 and is liable to be evicted?
- 2) To what result?

6. In order to establish the case, the 2nd petitioner's Founder Trustee by name V.Venkatappaiah examined as P.W.1 and got marked Ex.P.1 – Approved property register under section 25 of Endowments act 30/1987, Ex.P.2 – Copy of Orders dated 22.12.2011 passed by the Hon'ble High Court in W.p.No.14211/1994, Ex.P.3 – Office copy of Registered notice dated 24.03.2012 issued to the respondent along with postal receipt; and Ex.P.4 – reply notice dated 24.04.2012 got issued by the respondent along with envelope.

The respondent – P.Ramana Reddy himself examined as R.W.1 and got marked Ex.R.1 TO Ex.R.14 - Original maktha receipts from 21.03.2009 to 29.03.2016

7. Upon hearing both sides and upon considering the material in record, the A.P Endowments Tribunal, Pedakakani, Amaravathi, allowed the Petitioner with costs, directing the respondent to vacate and deliver vacant possession of the petition schedule property within one (01) month to the 2nd Petitioner temple. The Tribunal also directed the Respondent to pay damages @ Rs.5,000/- per acre per annum from the year 2016 till delivery of the property. The Station House Officer, Butchireddypalem Mandal Police Station, SPSR Nellore District is directed to provide necessary police assistance in implementation of the above order to the Petitioners, on requisition, in the event of failure of the respondent to comply with the orders.

8. Being aggrieved by the said Order and Judgment, the Respondent preferred the present appeal on the grounds that – he is not encroacher or unauthorized occupier, but he is tenant of temple for the dry land of Ac:8.55 cents as per Ex.A.3 notice of Petitioners and he is cultivating that land and paying Maktha (rents) regularly and there are no arrears of rent payable by him; originally, the schedule land was a poramboke land, unfit for cultivation and without any irrigation facility, it was brought under cultivation by the respondent after investing huge amounts to make the land fit for cultivation and has been cultivating the land by drawing water from his own source through a pipeline from other lands. The Respondent is a small farmer and his entire family is depending on the O.A schedule land for their livelihood, if he is evicted, from it, his entire

family will be deprived of their only source of livelihood. Hence, prayed to set aside the decree and order dated 23.05.2018 passed in O.A.No.557 of 2012 on the file of Andhra Pradesh Endowments Tribunal, Amaravathi at Pedakakani and allow the appeal.

9. Heard both counsel and perused the material available in record.

10. The Lower Tribunal considering the material placed before it and Section 83(1) of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 30 of 1987, which reads as follows:-

“83. Encroachments by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers - (1) Where the Assistant Commissioner having jurisdiction, either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereafter in this Chapter referred to as ‘encroacher’) any land, building, tank, well, spring or water-course or any space belonging to the institution or endowment, wherever situated or deemed as an encroacher under any of the provisions of this Act, the Assistant Commissioner shall report the fact together with relevant particulars to the [Endowments Tribunal] having jurisdiction over the division in which the institution or endowment is situated.

Explanation:- For the purpose of this Chapter the expression ‘encroacher’ shall mean any person who unauthorisedly occupy any land or building or space and deemed to include any person who is in occupation of the land or building or space without the approval of the competent authority sanctioning lease or mortgage, or licence and also a person who continues to remain in the land or building or space after the expiry or termination or cancellation of the lease, mortgage or licence in respect thereof granted to him or it”.

held that the Respondent is an encroacher and he is liable to be evicted and also liable to pay damages towards use and occupation of the schedule property of the 2nd petitioner Temple.

On perusal of the Order passed by the Tribunal, it can be observed that even as per the evidence of P.W.1, previously Maktha was not paid regularly by the respondent, but, however, the payment is up to date to the year 2013-14. Initially, the land was given as grazing poramboke by the Respondent and now it is a cultivated wet land. In the counter filed by respondent No.2, it is contended that as per the death certificate, appellant No.1 died on 15.09.2022 and thereafter the appellants are enjoying the temple land of Ac.8.55 cents along with their own lands of more than Ac.15.00 cents which is situated on two side boundaries of the temple land and in order to enjoy the produce they are paying a meager amount of Rs.12,000/- per annum for the land of Ac.8.55 cents.

11. It can also be observed that admittedly, the appellants – respondents got marked Exs.R.1 to R.14, which are original Maktha receipts from 21.03.2009 to 29.03.2016 to establish that they have been paying certain amounts to the temple towards Maktha. However, on the sole ground that the appellants have not filed any valid lease by the date of application, the Tribunal held that the appellants are encroachers.

12. The respondent – temple having permitted the appellants to cultivate the said land by developing the same and also by receiving certain amounts from the appellants towards Maktha cannot file an application before the Tribunal seeking eviction on the ground that the appellants are encroachers. However,

the grievance of the respondents is that the appellants herein do not have any valid lease by the date of filing of the said application. Admittedly, the respondents have been receiving certain amounts from the appellants herein by way of maktha. In such a case, the appellants herein cannot be treated as encroachers. In the presence of evidence of appellant No.1 before the Tribunal as R.W.1 and Exs.R.1 to R.14, the Tribunal ought not to have allowed the O.A. filed by the respondents herein seeking eviction of the appellants. Therefore, the appeal deserves to be allowed.

13. In the result, the appeal is allowed setting aside the order dated 23.05.2018 passed in O.A.No.557 of 2012 by the A.P. Endowments Tribunal, Amaravathi. No costs.

Consequently, pending miscellaneous applications, if any, shall stand closed.

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Dated 18.02.2026.

SMT JUSTICE V.SUJATHA

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THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL MISCELLANEOUS APPEAL NO: 552/2018

DATED 18.02.2026

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