

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1195 OF 2003

STATE OF A.P.

Appellant (s)

VERSUS

VEMULAPALLY SATHYAM & ANR.

Respondent(s)

(With office report )

Date: 24/02/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM  
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Appellant(s) Mr. Manoj Saxena, Adv.  
Mr. Mayank Nigam, Adv.  
Mr.T.V.George,Adv.

For Respondent(s) Mr. R. Anand Padmanabhan, Adv.  
Mr. Praveen Kumar Pandey, Adv.  
Mr. D. Mahesh Babu,Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is allowed in terms of  
the signed order.

(Neetu Khajuria)  
Sr.P.A.

(Mithlesh Gupta)  
Court Master

(Signed order is placed on the file.)  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1195 OF 2003

State of Andhra Pradesh

..... Appellant(s)

Versus

Vemulapally Sathyam & Anr.

..... Respondent(s)

O R D E R

Heard learned counsel for the parties.

The facts of the case are brief and without controversy.

In a land ceiling proceeding held against one N. Ranga Rao, now deceased, under the provisions of A.P. Land Reforms (Ceiling of Agricultural Holding) Act, 1973, he was found in possession of land in excess of the ceiling area by 2.3379 hectares. The surplus land in the hand of the land holder included 2 acres 3 guntas claimed by Vemulapally Sathyam, respondent no.1. Though not a party to the Land Ceiling Proceedings held against N. Ranga Rao, Vemulapally Sathyam, approached the Land Reforms Appellate Tribunal seeking exclusion of the aforesaid 2 acres 3 guntas of land from the land declared surplus in the hand of N. Ranga Rao. He claimed that on the basis of an unregistered agreement for sale executed on December 31, 1955, N. Ranga Rao had given possession of the land to one Bobba Bushaiah, who happened to be his father-in-law. Further, in the year 1964, Bobba Bushaiah, gave possession of the land to him on the basis of an unregistered settlement deed. It was the case of the applicant-respondent no.1 that since December 31, 1955, the land was coming under his continuance and interrupted possession and, therefore, it could not be included in the area of the surplus land in the proceeding held against N. Ranga Rao.

The Land Reforms Appellate Tribunal accepted the plea of respondent no.1 and by order dated January 28, 1993 allowed his application. The State of Andhra Pradesh sought to challenge the order passed by the Land Reforms Appellate Tribunal before the Andhra Pradesh High Court in Civil Revision Petition No.3190 of 1994 but the High Court dismissed it vide order dated August 16, 1999. It is a brief order, the relevant portion of which is as follows:-

"Learned Government pleader for the State

submits that the 1st respondent did not acquire the title, he was only an agreement holder and therefore the learned Tribunal ought to have dismissed the claim for deletion of an extent of 2 acres 3 guntas. Hence, he submits, that the finding of the Appellate Tribunal is wholly erroneous and contrary to law.

I am unable to agree with the contention of the learned Government pleader. The Appellate Tribunal has categorically held that the 1st Respondent was in possession and enjoyment of the land ever since 1995 through the agreement of sale dated 31.12.1955. Such a finding, based on the appreciation of evidence, is not open for this Court to be interfered with. The C.R.P is therefore dismissed. However, it is open for the Government to proceed against the other lands which are computed in the declaration of the declarant, in accordance with law."

Learned Counsel appearing for the appellant, the State of Andhra Pradesh, submitted that the view taken by the High Court was contrary to a decision of this court in State of Andhra Pradesh vs. Mohd. Ashrafuddin, (1982) 2 SCC 1. In paragraphs 6 & 9 of the judgment it was observed as follows:

"6. The Attorney General appearing for the State has raised only one contention. According to him, on a correct interpretation of the definition of 'holding' as given in Clause (i) of Section 3 of the Act, the land transferred by the Respondent will still continue to be a part of his holding. In order to appreciate the contention we have to read the definition of 'holding' along with the explanation attached to it:

3. (i) 'holding' means the entire land held by a person, -  
(i). As an owner;  
(ii). As a limited owner;  
(iii). As an usufructuary mortgagee;  
(iv). As a tenant;  
(v). Who is possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise; or in one or more of such capacities;

And the expression 'to hold land' shall be construed accordingly;

Explanation - Where the same land is held by one person in one capacity and by another person in any other capacity, such land shall be included in the holding of both such persons;

The term 'holding' takes in its fold land held by various persons in various capacities viz.,

as an owner, as a limited owner, as an usufructuary mortgagee, as a tenant or as a person in possession by virtue of a mortgage by a conditional sale or through part performance or a contract for the sale of land or otherwise, or in one or more of such capacities, The Explanation appended to the definition clearly contemplates that if the same land is held by one person in another capacity and by other another person in another capacity such land shall be included in the holding of both such persons. Obviously, therefore the same land can be taken to be a part of the holding of more persons than one provided they hold it in different capacities.

9. It is by now well settled that a person in possession pursuant to contract for sale does not get title to the land unless there is a valid document of title in his favour. In the instant case, it has already been pointed out that the transferee came into possession in pursuance of an agreement for sale but no valid deed of title was executed in his favour. Therefore, the ownership remained with the respondent-transferor. But even in the absence of a valid deed of title the possession in pursuance of an agreement of transfer cannot be said to be illegal and the transferee is entitled to remain in possession. If per chance he is dispossessed by the transferor, he can recover possession. The transferor cannot file any suit for getting back possession but all the same he will continue to be the owner of the land agreed to be transferred. The respondent, in our considered opinion, satisfies the conditions contemplated by the definition of the term 'holding' and the land transferred by him under a defective land deed will form part of his holding. The High Court, therefore erred in holding that the land in possession of the transferee cannot be taken to be a part of the holding of the transferor-respondent."

In light of the judgment of this court in Mohd.

Ashrafuddin, it must be held that the view taken by the High Court and the Land Reforms Appellate Tribunal is wrong and legally untenable. We accordingly, set aside the orders passed by the High Court and the Land Reforms Appellate Tribunal.

But this is not the end of the matter. On behalf of respondent no.1, it was contended that the excess land in the hand of N. Ranga Rao must be taken away from the lands (within the ceiling area) left in his possession and not from any land(s) transferred by him as far back as in the year 1955.

Though the widow of N. Ranga Rao is on record as respondent no.2, there is no appearance on her behalf. We also find that this aspect of the matter was considered neither by the Land Reforms Appellate Tribunal nor by the High Court. In the aforesaid circumstances, we deem it fit to remit the matter to the Land Reforms Appellate Tribunal to examine the matter on this limited issue. It will be open to the respondent no.1, Vemulapally Sathyam to agitate his grievances before the Land Reforms Appellate Tribunal that the excess area (2.3779 hectares) found in the hand of the land holder, N. Ranga Rao should be taken away from the lands, within the area of ceiling, left to him and not from the land transferred by him in the year 1955.

On hearing all the parties, the Land Reforms Appellate Tribunal will pass appropriate orders, in accordance with law. Since the matter is quite old, we hope and expect that the Land Reforms Appellate Tribunal will pass a final order within six months from the receipt/production of a copy of this order.

In the result, this appeal is allowed subject to the observations and directions made above.

.....J.  
(AFTAB ALAM)

.....J.  
(DR. B.S. CHAUHAN)

New Delhi;  
February 24, 2010.