IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

MONDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND TWELVE

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HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Review A.S.M.P. No.719 of 2012

in A.S. No.2474 of 1999

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Between:

Alla Nageswara Rao (died) rep. by L.Rs.
and others .. Petitioners

AND

Kalipindi Appala Narasamma and others .. Respondents

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ORDER:

The petition is with a request to review the judgment of this Court, dated 28-02-2012 in A.S. No.2474 of 1999.

2. The review petitioners stated that the Supreme Court in C.A. No.4792 of 2008 held that the civil Court had jurisdiction to entertain the suit and did not decide the issue as to whether the civil Court is barred from giving effect to the provisions of the Andhra Pradesh (Andhra Area) Tenancy Act, 1974 (for short "the Act"). Ex.A.8 creating a permanent tenancy recited it to be heritable, but it did not empower the tenant to transfer the permanent tenancy rights making the alienations not binding on the landlords. Even assuming that the alienations prior to 1974 are valid, subsequent alienations are invalid in view of the prohibition in Section 10(5) of the Act, whereunder the rights of the cultivating tenant are only heritable and consequently, the alienation of the permanent tenancy rights in favour of the plaintiffs under Ex.A.1, dated 23-06-1993 is invalid. Even permanent leases are subject to the provisions of the Act as held in 1989 (3) ALT 335 and (2010) 3 SCC 776. The overriding effect of Section 17 of the Act was not noted and adverted to and Ex.A.78 judgment in O.S. No.79 of 1961 cannot bind the parties in view of Section 17. The reply of the respondents that the Tenancy Act had no application being prospective and the reply of the appellants that a statute would operate even on antecedent facts were not noted, though the precedents cited were noted without noting in what context they were cited. The judgment delivered on 28-02-2012 in the case reserved for judgment on 03-12-2010 seriously prejudices the petitioners due to the delay in not adverting to the contentions

urged at the time of hearing. The petitioners, therefore, sought for the judgment and decree being reviewed, as the judgment failed to record the above cited contentions and advert to them.

3. The 1st respondent filed a counter-affidavit contending that there is no error apparent on the face of the record to review the judgment rendered after a careful consideration of the entire evidence on record and the contentions of the parties. The contentions now claimed to have not been recorded and adverted to were not raised in the grounds of appeal and Ex.A.8 permanent lease deed being susceptible to the provisions of the Tenancy Act as claimed in the grounds of appeal, was referred to. If the appellants are aggrieved that their arguments were not properly considered, they have to file an appeal before appropriate forum and there is no ground for review.

4. Sri B. Adinarayana Rao, learned counsel for the petitioners and Sri T.S. Anand, learned counsel for the respondents are heard.

5. The point for consideration is whether the judgment in question is liable to be reviewed for the reasons relied on by the review petitioners ?

6. Three precedents on the scope of a review under Order LXVII Rule 1 of the Code of Civil Procedure (for short "CPC") have been cited by Sri T.S. Anand, learned counsel for the respondents. A Division Bench of this Court in **Mudiki Bhimesh Nanda v. Tirupathi Urban Development Authority, Tirupathi**[1] referred to Order LXVII Rule 1 CPC enumerating that review of

judgments may be allowed on three grounds: (1) discovery of new and important matter or evidence, which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order was made, (2) some mistake or error apparent on the face of the record, or (3) for any other sufficient reasons, which was interpreted to be analogous to the other two reasons. The distinction between a mere erroneous decision and a decision vitiated by an error apparent was referred to and after an exhaustive reference to various precedents, the Division Bench found that there was no error apparent on the face of the judgment and for the aggrieved the remedy is not the review.

7. In **Haridas Das v. Usha Rani Banik**[2], the Apex Court referring to Order XLVII Rules 1 and 2 and Section 114 CPC pointed out that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Only if there could reasonably be no two opinions entertained about a substantial point of law, a clear case of error apparent on the face of the record would be made out.

8. In **T. Thimmaiah D By L.Rs. V. Venkatachala Raju D by L.Rs.**[3], the Apex Court negatived a complete re-appreciation of the matter on facts in an application for review, completely ignoring the principles laid down under Order XLVII Rule 1 CPC.

9. So far as the present case is concerned, the review is not obviously sought for on the ground of discovery of any new

or important matter or evidence and it is only on the ground of the specified contentions either being not adverted to or even when being adverted to, not being considered in their application to the facts in issue. The attempt seems to pinpoint a mistake or error apparent on the face of the record, which may also be considered to be a sufficient reason for review. Though stated in so many words, the applicability of the Act even to the permanent lease under Ex.A.8, alienation of which permanent tenancy rights is, hence, prohibited by Section 10(5) and any judgments, against which, cannot be taken cognizance in view of Section 17, is the question said to have been not adverted to and considered.

10. In the impugned judgment after making a detailed reference to the pleadings of the parties, issues raised before the trial Court and the evidence produced, the conclusions in the judgment of the trial Court on merits were noted and particularly the conclusion that the recital in Ex.A.8 specifically stating the permanent lease to be heritable with absolute rights and enjoyment makes the lease hold rights transferable in the absence of any prohibition against alienation and the very suits by the predecessors of defendants 1 to 5 against the transferees of the lease hold rights were obviously in recognition of such transfers, which cannot be questioned in this suit, was specifically noted. The trial Court, of course, held the permanent tenancy rights to be not making the holders thereof cultivating tenants within the meaning of the Tenancy Act, but when a learned Judge of this Court by the judgment, dated 30-09-2005 held that when the plaintiffs are claiming perpetual tenancy rights through declaration and when the Tenancy Act does not recognize any transfer of

permanent tenancy rights, the matter has to be decided by the Special Tribunal under the Tenancy Act and not the civil Court, the matter was carried to the Apex Court in Civil Appeal No.4792 of 2008. The Apex Court held the suit to be, in effect and substance, for declaration of title and recovery of possession, which was maintainable before the civil Court and merely because for grant of ancillary relief claimed by the plaintiffs including the relief of recovery of possession, the Special Officer could have been moved, the civil Court jurisdiction cannot be treated to have been ousted. The applicability of the provisions of the Act to the questions in issue, thus, does not detract from the jurisdiction of the Civil Court to entertain and decide the suit. It was noted in the impugned judgment that the existence of the jurisdiction of the civil Court to entertain the suit is, therefore, concluded by the order of the Apex Court.

11. Specifically referring to the recitals in Ex.A.8, it was noted that the possession and enjoyment of the land was specified to be with all rights and that the permanent lessee or person standing in his place (obviously meaning the successors in interest of permanent lessee) were assured to be safeguarded of their rights to enjoy the lands under the permanent lease without any obstruction from any third party, which right was undertaken to be implemented by the permanent lessor and his successors in interest. It was further noted that even the efforts to get the persons in possession evicted through the Special Officer under the Tenancy Act did not prove successful and the decision of a Division Bench in **K. Venkayya v. T. Peda Venkata Subbarao**[4] recognizing a lease holder's interest like any other interest in

immovable property being capable of inherited or transferred, was also noted.

12. Coming to **Vasamsetti Maridayya v. Baggarapu Subbarao Choultry**[5] referred to in the grounds of review, it was clearly opined that what is under consideration in the present suit is not the liability of the 1st plaintiff to have the tenancy terminated under Section 13 of the Act for any reasons specified therein. It was further noted that in the absence of an order of termination under Section 13 or a surrender under Section 14 or resumption under Section 12 or extinguishment of rights of cultivating tenant under Explanation-II to Section 10, a cultivating tenant cannot be forcibly dispossessed without taking recourse to due process of law and it is not even the claim of the contesting defendants that the 1st plaintiff or her predecessors in interest were out of possession due to taking recourse to any such legal process.

13. Similarly **Chittoor Chegaiah v. Pedda Jeeyangar Mutt**[6] was also referred to in detail and again the nature of the present suit being not one under the Tenancy Act, but being a suit for declaration of the rights of the 1st plaintiff and consequential possession in view of the dispossession being without taking recourse to due process of law, was noted. Ultimately, it was concluded that none of the contesting defendants or their predecessors in interest had ever taken recourse to any relief under the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 against the 1st plaintiff or her predecessors in interest. Concerning the alienability of the permanent tenancy rights, it was

also concluded that any claim that the third parties were imposed on an unwilling landlord cannot be sustained when the permanent lessor and his successors in interest were receiving the agreed rent through civil suits against not only the original lessee, but also his transferees and transferees from transferees. The appeal ultimately failed due to upholding of the jurisdiction of the civil Court by the Apex Court and as the findings of fact arrived at by the trial Court have been practically unchallenged in the grounds of appeal.

14. Thus, the claim that the impact of the provisions of the Andhra Pradesh (Andhra Area) Tenancy Act, 1974 as amended on the facts in issue was not considered, is not correct or appropriate. In confirming the judgment and decree of the trial Court, the provisions of the Act or the impact of the said provisions on the rights and contentions of both parties on their application to the permanent lease in question were not ignored and there is nothing in the judgment of confirmation, which ran against the provisions of the special statute or did not give effect to any particular provision. If the impugned judgment did not concur with the perception of the review petitioners about the inalienability of the permanent tenancy rights in view of Section 10(5) of the Tenancy Act, the same cannot be considered to be an error or mistake apparent on the face of the record, though such a conclusion is certainly open to challenge by way of an appeal. While it was never held that the permanent lease in question is outside the scope of Tenancy Act or that the Tenancy Act has no overriding effect, it is with reference to the application of the amended Tenancy Act even to the antecedent facts that the

conclusions were reached, which, in the perception of this Court, are the appropriate and reasonable conclusions and if the perception of the review petitioners is that they are erroneous and incorrect, the remedy, undoubtedly, is not by way of review. It is true that the delivery of the judgment after the conclusion of the arguments was not prompt which is regretted, the same cannot be considered to have caused any serious prejudice to the review petitioners, as every contention raised and every precedent cited were referred to and only because they were not perceived in the manner in which the review petitioners would have liked them to be understood, the same cannot be a valid ground for review. Not that the perceptions and conclusions of this Court are infallible, but the remedy is not undoubtedly in the very restricted and limited jurisdiction of review.

15. The review petition has to, therefore, fail and it is accordingly dismissed. No costs.

G. BHAVANI PRASAD, J

Date: 25-06-2012

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[1] 2005 (5) ALT 41

[2] 2006(2) Kerala Law Times 21

[3] AIR 2008 SC 1993

[4] AIR 1957 A.P. 619

[5] 1989 (3) ALT 335

[6] (2010) 3 SCC 776