

HON'BLE SRI JUSTICE M.VENKATA RAMANA
CIVIL REVISION PETITION Nos. 6890, 6975 of 2018

COMMON ORDER:

These two Civil Revision Petitions are preferred against the common order in ATA No.14 of 2016 and ATA No.13 of 2016 on the file of the Tenancy Appellate Tribunal-cum-Principal District Judge, West Godavari, at Eluru, dated 11.04.2018. The 1st respondent in both these A.T.As. (for short, 'tenancy appeals') is the revision petitioner. He is the petitioner in ATC No.14 of 2015 on the file of Special Officer under A.P.Tenancy Act-cum-Court of learned Principal Junior Civil Judge, Tadepalligudem (for short, tenancy petition). The respondents in CRP No.6890 of 2018 are the respondents 1 to 5 therein. Similar is the situation in CRP No.6975 of 2018 in arraying these parties.

2. For convenience, the parties as arrayed in ATC No.14 of 2015 shall be referred to hereinafter.

3. The property involved in the tenancy petition is a total extent of Ac.10-27 cents at Unguturu Village, within the Sub Registration District of Tadepalligudem in West Godavari District comprised in the following R.S.Nos.

1. R.S.No.1306/2	...	A.C. 1-29 cents (full)
2. R.S.No.1142/9	...	Ac. 0-29 cents (full)
3. R.S.No.1143/7	...	Ac. 0-19 cents (full)
4. R.S.No.1142/2	...	Ac. 0-05 cents (full)
5. R.S.No.1142/5	...	Ac. 0-90 cents (full)
6. R.S.No.1142/3	...	Ac. 0-65 cents (full)
7. R.S.No.1142/5	...	Ac. 0-35 cents (full)
8. R.S.No. 1143/6	...	Ac. 1-06 cents (full)
9. R.S.No.1142/8	...	Ac. 0-71 cents (full)
10.R.S.No.1126/10	...	Ac. 0-17 cents (full)
11.R.S.No.1126/9C	...	Ac. 0-09 cents (full)

4. This property shall be referred to hereafter as 'the disputed lands'.

5. The case of the petitioner in the tenancy petition is that the disputed lands belonged to Sri Chivukula Visweswaram. He died on 13.02.2013 at Rajahmundry. The 1st respondent is his wife. He and the 1st respondent did not have issues. The 3rd respondent is the brother of the 2nd respondent. The respondents 4 and 5 are stated to be close associates of the 3rd respondent in whose favour the 2nd respondent had executed sale deeds in respect of different extents on 14.05.2015 out of the disputed lands.

6. The petitioner further claimed in the tenancy petition that he has been the tenant of the disputed lands since the year 2010 of Sri Chivukula Visweswaram and it was for a period of 15 years commencing from 01.06.2010 to 31.05.2025 on an yearly rental payable in cash of Rs.12,000/-. In evidence thereof, according to the petitioner, a registered lease deed was executed by Sri Chivukula Visweswaram in his favour on 30.05.2012 and that he has been raising paddy and other crops after reclaiming the land and making it fit for cultivation. He further claimed that he was regular in paying rents during the lifetime of Sri Chivukula Visweswaram and later on also.

7. The petitioner further contended that the 2nd respondent was fostered by Sri Chivukula Visweswaram and the 1st respondent and that Sri Chivukula Visweswaram executed a Will bequeathing his properties in favour of the 1st respondent as well as the 2nd respondent on 06.02.2013. He further contended that the disputed lands were bequeathed to 2nd respondent thereunder, which was acted upon, and at the instance of the 1st respondent, he was paying the lease amount to the 2nd respondent, who became its owner. He further alleged that at the instance of the 3rd

respondent, there arose differences between the respondents 1 and 2 and thus they came in his way of enjoying the disputed lands.

8. The petitioner also alleged that at the instance of the 3rd respondent, the 2nd respondent executed sale deeds on 14.05.2015 in respect of an extent of Ac.5-80 cents stated to be for Rs.40,60,000/- in favour of the 3rd respondent, another sale deed on the same day for Ac.1-78 cents in favour of the 4th respondent for Rs.12,46,000/- and for Ac.1-00 in favour of the 5th respondent for Rs.7,00,000/- claiming that these extents were delivered to them. He claimed that being a cultivating tenant, he has been in possession of these lands and who has right of pre-emption to purchase these lands first.

9. Alleging that there has been interference with his peaceful possession and enjoyment of the disputed lands by the respondents 1 and 3 to 5, he sought to declare that he has been the cultivating tenant of the disputed lands and also to declare that the sale deeds dated 14.05.2015 referred to above as null and void. He further sought permanent injunction against the respondents from interfering with his possession and enjoyment of the disputed lands.

10. Along with the main tenancy petition, he filed I.A.No.2088 of 2015 under Order-39, Rules 1 and 2, r/w. Section 151 CPC to grant a temporary injunction to restrain the respondents from interfering with his possession and enjoyment of the disputed lands during pendency of the main tenancy petition.

11. The 2nd respondent, who is none other than the son of the petitioner, supported his version in his counter.

12. The 1st respondent resisted the claim of the petitioner denying the alleged tenancy claimed by him and as well as execution of the Will

purportedly by Sri Chivukula Visweswaram. She further contended that she is the absolute owner of the disputed lands, having succeeded from her late husband Sri Chivukula Visweswaram, as sole legal heir, and sold away a part of the disputed lands in favour of the respondents 3 to 5 on 14.05.2015. She further contended that there is no relationship of landlord and tenant between her and the petitioner and thus, questioned the jurisdiction of the Tenancy Tribunal. She further contended that the 2nd respondent did not have any right to receive the lease amounts from the petitioner, who is none other than his father. She specifically contended that Sri Tottala Appala Raju, grandfather of the 4th respondent, and Sri Edupalli Somulu were cultivating the disputed lands for the last 40 years. She also contended that after death of Tottala Appala Raju, father of the 4th respondent used to cultivate a part of the disputed lands and some part of the disputed lands was cultivated by Sri Edupalli Pedhi Raju, who is the husband of the 5th respondent. They were also paying maktha to Sri Chivukula Visweswaram and after his lifetime, she has been receiving these amounts from these tenants. Thus, according to her, she disputed the claim of the petitioner.

13. The respondents 3 to 5 filed their respective counters opposing the claim of the petitioner supporting the contention of the 2nd respondent, disputing that the petitioner has been the tenant of the disputed lands while asserting purchase of the lands by them from the 1st respondent under valid sale deeds and also possession and enjoyment of their respective extents in the disputed lands.

14. Basing on the material viz., the pleadings as well as Ex.P1 to Ex.P9 relied on for the petitioner and Ex.R1 to R12 relied on for the respondents, the tenancy tribunal accepted the version of the petitioner

basing on Ex.P1-lease deed, and granted temporary injunction as requested. In the tenancy appeals, the appellate tribunal reversed such findings holding that no material has been produced by the petitioner to prove his possession and enjoyment of the disputed lands while also suspecting the validity of Ex.P1. In the appellate tribunal, the petitioner relied on Ex.P10 and whereas the respondents relied on Ex.R13 to R15. Thus, the temporary injunction granted in favour of the petitioner was vacated in the appeal.

15. Contentions are advanced by Sri P. Radhakrishna, learned counsel for the petitioner, in support of the claim of the petitioner referring to order of tenancy tribunal and whereas Sri Dasari S.V.V.S.V.Prasad, learned counsel for the respondents, supported the order in tenancy appeals referring to the material on record and particularly pointing out that a claim of tenancy is set up by the petitioner from none other than his son, which was rightly disbelieved by the appellate Court.

16. In the backdrop of such material and contentions, the following points emerge for determination in these revision petitions.

1. Whether the petitioner made out *prima facie* case, balance of convenience in his favour and would he suffer irreparable loss and injury, if temporary injunction as requested in relation to the disputed lands is refused and against the respondents?
2. To what relief?

POINT No.1:-

17. The petitioner is claiming that he is the tenant of the disputed property, since the year 2010. It admittedly belonged to Sri Chivukula Visweswaram. Sri Chivukula Visweswaram died on 13.02.2013. This fact is not in dispute as is made out by Ex.P9-death certificate. In order to prove his relationship as the tenant of the disputed lands, he is relying on a

registered lease deed under Ex.P1 entered into between Sri Chivukula Visweswaram and the petitioner dated 30.05.2012. He is also relying on Ex.P2-land receipt dated 31.05.2012 under which he claimed that he had paid lease amount to the said Sri Chivukula Visweswaram. However, the 1st respondent has disputed the relationship between Sri Chivukula Visweswaram and had claimed that it was grandfather of the 4th respondent and Sri Tottala Appala Raju and grandfather of Edupalli Pedhiraju viz., Sri Edupalli Somulu were tenants of these lands since about 40 years, which was carried on by their successors-in-interest, now represented by the 4th respondent and the husband of the 5th respondent.

18. The petitioner has also set up that upon death of Sri Chivukula Visweswaram, on account of the Will executed by him, the 2nd defendant became entitled to the disputed property and to whom, according to the petitioner, he went on paying the lease amounts time to time. He sought to prove this fact *prima facie* by relying on Ex.P3 to Ex.P5.

19. The 1st respondent seriously questioned the claim of the petitioner denying that her husband had ever executed a Will as claimed by the petitioner and the 2nd respondent, which, according to her, was brought out by both of them in collusion, to deprive her to enjoy these lands with right, title and interest. However, in the proceedings of this nature, question of title cannot be gone into. The very relationship of petitioner and the 2nd respondent, when the claim of the petitioner is considered as to exclusion of the 1st respondent from the disputed lands, raises any amount of doubt.

20. The petitioner in the tenancy appeal relied on Ex.P10, which is CC of an affidavit filed by Sri Chivukula Visweswaram in W.P.No.37758 of 2012 on the file of then High Court of Andhra Pradesh at Hyderabad. It

was a writ petition filed by him challenging acquisition of the lands belonging to him. A reference is made in his affidavit in this Writ Petition that an extent of Ac.1-58 cents in S.No.1128/2 along with Ac.0-65 cents in the same S.No. belonging to him and the 1st respondent respectively were leased out to the petitioner herein under original of Ex.P1. The appellate Court considered this part of averments in the affidavit in Ex.P10 and observed that only certain extent of the disputed land in one of the items was referred to therein as subject matter of the original of Ex.P1, while also pointing out that Ac.0-65 cents of land belonging to the 1st respondent is described therein as a part of this writ affidavit. On such premise, the appellate Judge did not completely place reliance on Ex.P1.

21. This circumstance needs to be considered, as rightly observed by the trial Court. Further, the claim of the 1st respondent in setting up tenancy in others has certain bearing in evaluating the effect of Ex.P1 to Ex.P5 in support of his contention. He did not choose to produce any document in the course of enquiry before the tenancy tribunal to prove possession of the disputed lands by the date of institution of such petition. He claimed that he was paid compensation, when he suffered loss on account of Neelam cyclone. The petitioner could have produced any record relating to payment of such compensation and if it was on account of the loss suffered on crop damage referring to the disputed lands. It is a serious omission on his part and to substantiate his claim. Mere production of Ex.P2 to Ex.P5, cannot have any bearing in this matter to establish his possession *prima facie*.

22. On behalf of the 4th respondent, Ex.R4 to Ex.R7 were produced before the tenancy tribunal. Ex.R4 and Ex.R5 are Kisan Credit Cards (Loan eligibility cards) issued to Sri Tottala Sanyasi Rao, who is the father of the

4th respondent. R.S.Nos.1128-2, 1129-5B and 1131-3 are referred to therein. They cover an extent of Ac.4-74 cents. Except S.No.1131-3, other extents are a part of the disputed lands. These cards were issued for the period from 01.06.2011 to 31.05.2012 and from 01.06.2012 to 31.05.2013. Ex.R6 is an extract of adangal for the period from 2015-16 (fasli 1426) relating to R.S.No.1129-5b covering an extent of Ac.1-78 cents, which is item No.14 of the disputed lands. It shows that the 4th respondent was in possession of this land and as a purchaser. Obviously, this entry was made subsequent to purchase of this property under the original of Ex.P7 on 14.05.2015 by the 4th respondent. Recording such fact of possession by the Competent Revenue Authority itself is a positive indicator in this context to support the contents of Ex.R4 and Ex.R5 and that his father was in possession and enjoyment of the extent referred to therein. Ex.R7 is an extract of ROR of similar nature supporting the above documents as well as the contention of the respondents.

23. Ex.R10 and Ex.R11 are also Kisan Credit Cards or loan eligibility cards issued in favour of Edupally Pedhiraju. They cover an extent of Ac. 5-49 cents. R.S.Nos. 1143-5, 1142-9, 1143-7, 1142-2, 1143, 1142-8 and 1306-2 are a part of the disputed lands. Ex.R9 is extract of ROR, which shows that the 5th respondent is the pattadar of an extent of Ac.1-00 in R.S.No.1306-2A1. It was the situation during November, 2015 and obviously these entries were made subsequent to purchase of such an extent under Ex.P8 on 14.05.2015 in the name of the 5th respondent.

24. When the effect of these documents is considered *vis-a-vis* the claim of the petitioner based on Ex.P1 to Ex.P5 as well as Ex.P10, it is clear that both the parties have set up such material to substantiate their contention as to possession of the disputed lands. The documents so

produced by the respondents clearly make a dent into the claim of the petitioner and to question if he continued to be the tenant of the disputed lands.

25. Therefore, mere production of Ex.P1 reflecting the alleged lease agreement in respect of the disputed property is not sufficient by itself in the given facts and circumstances of the case. The statement so made in Ex.P10 by the original owner of this land Sri Chivukula Visweswaram should be considered in the presence of the documents produced by the respondents. For this purpose, necessarily the parties have to lead evidence in a regularly constituted enquiry. It cannot be subject matter of a decision basing on a summary enquiry in the interlocutory application.

26. When the question of tenancy of the petitioner is at stake, it is for him to establish his relationship with the disputed lands as their tenant *vis-a-vis* the original owner Sri Chivukula Visweswaram and on his demise, his wife. Claim of the petitioner that that by virtue of the bequest, his son became owner of this property, cannot readily be accepted, particularly, in the absence of any effort by the petitioner to produce the so called Will executed by Sri Chivukula Visweswaram. Therefore, as rightly observed by the appellate Court in the tenancy appeals, the matter requires a consideration in a full-fledged enquiry. It is also for the petitioner to dispel the cloud surrounding the original of Ex.P1, particularly in the context of the contention of the 1st respondent that it was manipulated by the petitioner taking advantage of the sale of certain property on the same day in favour of a third party Smt. Yesteru Rani, reflected by Ex.R2 by the original owner Sri Chivukula Visweswaram.

27. Therefore, in the above circumstances, neither Ex.P1 nor Ex.P2 can be held sufficient to make out possession of the petitioner of the disputed lands.

28. In the light of the above discussion, it has to be held that the petitioner failed to make out a *prima facie* case in his favour nor balance of convenience. In the absence of material produced by him to prove his possession and enjoyment of the disputed lands *vis-a-vis* the claim of the respondents on the date of tenancy petition, he cannot complain that he would suffer irreparable loss and injury in the absence of grant of temporary injunction during pendency of the tenancy petition. Thus, this point is answered.

POINT No.2:-

29. In view of what is stated above, the findings so recorded by the learned appellate Judge in both the tenancy appeals have to be confirmed holding that they are proper, while setting aside the order of the tenancy tribunal. Thus, this point is held.

30. In the result, both the CRPs. are dismissed. There shall be no order as to costs.

As sequel thereto, all miscellaneous petitions, if any, shall stand closed. Interim Order, if any, shall stand vacated.

JUSTICE M.VENKATA RAMANA

Dt:31.01.2020
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HON'BLE SRI JUSTICE M.VENKATA RAMANA

CIVIL REVISION PETITION Nos. 6975, 6890 of 2018

Dt:31.01.2020

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