

CASE NO.:
Appeal (civil) 6892-6893 of 1999

PETITIONER:
KANCHUSTHABAM SATYANARAYANA & ORS.

RESPONDENT:
NAMUDURI ATCHUTARAMAYYA & ORS.

DATE OF JUDGMENT: 22/02/2005

BENCH:
B.P.SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

(WITH CIVIL APPEAL NOS. 6894-6895 OF 1999)

B.P.SINGH, J.

These Appeals by the Plaintiff are directed against the Judgment and Order of the High Court of Judicature of Andhra Pradesh at Hyderabad dated September 21, 1998 in Second Appeal No.399 of 1989. The High Court, by its impugned Judgment and Order, allowed the Second Appeal and dismissed the plaintiff's suit for permanent injunction setting aside the Judgment and Decree passed by the Principal District Munsif, Ramachandrapuram dated 9.3.1981

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and affirmed by the Subordinate Judge, Ramachandrapuram by judgment dated 29th June, 1987. The High Court has also made certain directions while disposing of the Second Appeal.

Before appreciating the rival submissions, we may notice very briefly the facts of the case relevant for the disposal of these Appeals by special leave. The Appellant herein who was the plaintiff is the owner of the suit property consisting of coconut garden in R.S. No.103 measuring about 16.93-1/2 acres and a vacant land measuring 38 cents in R.S.No.107/1 of Village Serilanka in Ramachandrapuram Taluk, East Godavari District. The case of the Appellant was that he had leased out the said land to the defendant-respondent under an agreement dated 21.12.1967 for a period of 5 years on certain terms and conditions. The appellant filed a petition A.T.P.No.21 of 1973 under the Andhra Pradesh Tenancy Act, 1956 before the Tenancy Tehsildar, Ramachandrapuram for eviction of the respondent alleging that the respondent-tenant had committed default in payment of rent and therefore, was liable to be evicted. A Receiver was appointed in that proceeding who took possession of the land. Ultimately the

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Eviction Petition was allowed and the Respondent-tenant was directed to be evicted. Against the order of eviction the respondent preferred T.A.No.2 of 1974 before the Sub-Collector, Rajahmundry. While the appeal was pending the Appellant filed Execution Petition No.1 of 1974 before the Tehsildar and obtained delivery of possession of the suit land on 18.1.1974. Ultimately, the T.A.No.2 of 1974 filed by the respondent

was allowed on 7.6.1976 and the order of eviction was set aside. The matter was remanded to the Tehsildar for disposal afresh. While allowing the appeal the Sub-Collector ordered that the possession of the land should be restored to the tenant namely the Respondent. The respondent moved for delivery of possession pursuant to the Appellate Court's Order and the Tehsildar, by his Order dated 4.10.1976, directed the Revenue Inspector to take possession of the land in question and handover the same to the respondent.

While the matter stood thus, the Appellant filed a Writ Petition challenging the order directing re-delivery of possession of the land to the tenant-respondent. He also challenged, by a Writ Petition, the order of the Sub-Collector remanding the matter for fresh disposal and

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ordering that the possession of the land be restored to the tenant. The Appellant obtained an interim stay but subsequently the same was vacated on 30th November, 1976. A Writ Appeal was preferred by the Appellant but ultimately the same was dismissed.

Thereafter, the Appellant filed Original Suit No.84 of 1977 in the Court of Principal District Munsif, Ramachandrapuram for a permanent injunction restraining the defendant-tenant from interfering with his possession of the land. The suit was based primarily on the fact that the Appellant was in possession of the said property since 18.1.1974 pursuant to an Order passed in E.P. No.1/74 in A.T.P.No.21/73. The claim of the Appellant-Plaintiff was challenged by the respondent-tenant who disputed the truthfulness of the allegations made in the plaint and pleaded that in fact he had restored possession of the suit land on 5.10.1976 as per the Sub-Collector's direction in T.A.No.2/74.

The suit for permanent injunction was decreed by the learned District Munsif who recorded a finding of fact that on 18.1.1974 the Appellant had been put in possession of the land in question and that he had not been

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dispossessed on 5.10.1976 as contended by the defendant. The said finding was affirmed by the Appellate Court. The respondent-defendant preferred a Second Appeal before the High Court in which the impugned judgment has been passed. In the Second Appeal the High Court has held that the Civil Court had no jurisdiction to entertain the suit and grant injunction in favour of the Appellant-Plaintiff, in view of the provisions of Section 16 of the Andhra Pradesh Tenancy Act, 1956. It was held that in view of the jural relationship between the plaintiff and defendant with respect to suit land, such a dispute could not be brought before the Civil Court. It was further held that the Courts below failed to comprehend that the Appellant-plaintiff's continued possession was not lawful and in fact amounted to wrongful possession of the land as he retained the same in disregard of the lawful order of the Sub-Collector which was confirmed by the High Court by dismissal of his Writ Petition and Writ Appeal. The High Court, therefore, held that this was not a case in which the relief sought for by the Appellant for permanent injunction, being an equitable relief, could be granted.

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The High court has made certain other directions. It has held that the respondent is entitled to be put in possession of the suit land till A.T.P. 21/73 is disposed of afresh by the Tenancy Tehsildar. Apprehending that the Appellant-Plaintiff may not hand over possession, the High Court felt compelled to issue a direction to the Mandal Revenue Officer, Ramachandrapuram to deliver possession of the suit land to the

defendant in implementation of the order of the appellate authority namely, the Sub-Collector, Rajahmundry in T.A. 2/74 within one month, and if necessary, to seek the assistance of the police. The High Court, accordingly, setting aside the judgments and decrees of the Courts below dismissed O.S.84/77 for want of jurisdiction and vacated the injunction granted by the Courts below. It further directed the Trial Court to return the plaint to the plaintiff for presentation before a proper forum.

Learned counsel appearing on behalf of the appellant submitted that the judgment and order of the High Court is clearly erroneous. He submitted that in the first instance the concurrent judgments of the Courts below ought not to have been interfered with in the Second Appeal. He

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further submitted that the finding of the High Court that the suit was not maintainable before a Civil Court was clearly erroneous in view of the express provisions of Section 18 of the Andhra Pradesh Tenancy Act which makes the Act inapplicable to coconut orchards, which was the subject matter of the suit. Since the Andhra Pradesh Tenancy Act did not apply to coconut orchards, the jurisdiction of the Civil court was not barred and therefore, the suit filed by the petitioner-plaintiff before the Civil Court was maintainable. Counsel further submitted that in any event directions made by the High Court were not justified because the proceedings pending before the revenue authorities must proceed in accordance with law and the High Court was not justified in issuing directions of the nature issued by it. It was further submitted that in a subsequent litigation between the same parties it has been held by the High Court that the suit land is not covered by the provisions of the Andhra Pradesh Tenancy Act, and according to him that judgment of the High Court has not been appealed against.

On behalf of the Respondent it was contended that the Appellant had himself invoked the jurisdiction of the

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authorities under the tenancy laws and therefore, it was not open to him now to contend that those authorities had no jurisdiction to entertain his application. He further submitted that in any event the application for injunction was not bona fide and was only a device to circumvent the effect of the appellate order passed by the authorities under the Tenancy Act, which had in effect ordered restitution. The Appellant-Plaintiff having secured possession of the land in question under an order of the original authority was bound to restitute, pursuant to the order of the appellate authority which allowed the Respondent's appeal and dismissed his application.

Counsel for the Appellant-Plaintiff replied that there could be no estoppel against a statute, and in any event equitable considerations cannot override a statutory prohibition.

Having heard the parties, we are satisfied that no interference by this Court in exercise of jurisdiction under Article 136 of the Constitution is called for. We cannot lose sight of the fact that the Appellant himself invoked the jurisdiction of the authorities under the Andhra Pradesh Tenancy Act to seek eviction of the tenant.

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He succeeded before the original authority and in execution of the order obtained possession of the land, but lost before the appellate authority. The appellate authority directed restitution and therefore, an order was passed for putting the respondent in possession of the suit land pursuant to the appellate authority's order dismissing the application for eviction

of the respondent. The Appellant sought to challenge the orders by filing Writ Petitions before the High Court. Those Writ Petitions, and thereafter the Writ Appeals, were dismissed. It was only thereafter that the Appellant filed a suit for permanent injunction for restraining the respondent-tenant from interfering with his possession, which he had secured pursuant to an order of eviction which was set aside in appeal.

In our view, it is not necessary for us to express any considered opinion on the question as to whether in view of the provisions of Section 18 of the Andhra Pradesh Tenancy Act the suit before the District Munsif was maintainable. We shall assume in favour of the Appellant for the purpose of these appeals that such a suit was maintainable though we express no considered opinion on that question. Assuming that such a suit was maintainable

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the question is whether the relief of permanent injunction by way of equitable relief ought to have been granted in favour of the Appellant. We have earlier noticed that the Appellant himself had invoked the jurisdiction of the authorities under the Andhra Pradesh Tenancy Act seeking eviction of the respondent who was his tenant. Though the eviction application was allowed by the original authority and the Appellant was put in possession of the suit land, his appeal was dismissed and an order was passed for restitution. It was at this stage that the Appellant invoked the writ jurisdiction of the High Court to stay the proceedings, and when he failed before the High Court he filed a suit for injunction for restraining the respondent-tenant from interfering with his possession of the suit land. In fact the suit for injunction was filed with a view to defeat the process of restitution which followed the Appellate authority's order. It is now sought to be contended by the learned counsel for the appellant that the tenancy courts had no jurisdiction and therefore, the order of restitution also has no force. If we accept the contention of the appellant that the order passed by the tenancy courts at his instance are without jurisdiction and

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void then in equity the respondent should be put back in possession of the land in question so as to obtain status quo ante, because the appellant himself obtained possession of the land by executing the order of eviction passed under the Act at his instance. We are satisfied that equitable relief of the nature asked for in the suit in question should not have been granted in favour of the Appellant so as to defeat the order of restitution passed by the revenue authorities under the Tenancy Act whose jurisdiction under the Tenancy Act was invoked by the Appellant himself. The appellant cannot be permitted to retain possession by challenging the order as being without jurisdiction particularly when the jurisdiction was invoked by the appellant himself, only because the ultimate order has gone against him. The grant of discretionary relief such as injunction being in the nature of equitable relief must be granted inter-alia on considerations of equity and justice, and the Appellant who is himself guilty of inequitable conduct cannot claim such relief. Therefore, we find that in the facts and circumstances of the case, assuming for the sake of argument that the Civil Court had jurisdiction to entertain the suit, and even going to the extent of

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assuming that the tenancy courts had no jurisdiction to entertain the eviction petition filed by appellant himself, this was an appropriate case in which injunction ought not to have been granted. Having obtained an advantage by invoking the jurisdiction of the authorities under the

Tenancy Act, the Appellant cannot be allowed to retain that advantage by turning around and challenging the jurisdiction of the same authorities under the Tenancy Act. Even under the Code of Civil Procedure an order of Restitution is stayed only in exceptional circumstances. We, therefore, concur with the view of the High Court and dismiss these appeals.

Before parting with this judgment, we may observe that the High Court has passed certain directions directing the Mandal Revenue Officer, Ramachandrapuram to deliver possession of the suit land to the respondent-tenant if necessary, with police help. We notice the fact that the proceeding before the original authority under the Tenancy Act has yet to be completed after remand. Since there is an order of remand, that proceeding will have to be completed

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in accordance with law and the law must take its course. It was really not necessary for the High Court to pass any such direction since the law must take its course, and the authorities concerned may take such action as they may deem proper in accordance with law. Since the stand of the appellant before this Court is that the Tehsildar cannot exercise jurisdiction over the suit land in view of Section 18 of the Tenancy Act, it may be open to the Appellant to contend that proceeding before the authorities under the Tenancy Act is not maintainable. The appellant himself had invoked that jurisdiction. However, if he now wishes to contend that the proceeding initiated by him is not maintainable, he cannot be prevented from doing so and suffer all consequences that may follow therefrom. We wish to express no opinion on this aspect of the matter. Accordingly, these appeals are dismissed and the respondent-tenant is at liberty to seek possession of the land in question in accordance with law.

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For the reasons recorded in Civil Appeal Nos.6892-6893 of 1999, Civil Appeal Nos.6894-6895 of 1999 are also dismissed.