

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.4549 of 2011

ORDER:

This Revision is preferred under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act") challenging the order dt.26-08-2011 of the Appellate Authority-cum-Additional Chief Judge, City Small Causes Court, Hyderabad in R.A.No.232 of 2010 confirming the order dt.28-06-2010 in R.C.No.363 of 2006 of the I Additional Rent Controller-cum-XIII Junior Civil Judge, Hyderabad.

2. The petitioner herein is tenant of respondents in respect of premises bearing No.22-5-122/8, Suraj Market, Gulzar House, Hyderabad.
3. Under Ex.P-6 lease deed dt.26-12-1994 executed by petitioner in favour of father of respondents by name Jagadesh Pershad and his two brothers Mahaveer Pershad and Ganesh Pershad, petitioner was inducted as tenant of the above premises. He is carrying on goldsmith business therein.
4. The respondents contended that under the partition deed dt.30-04-2005, they became the exclusive owners of the R.C. schedule property since it fell to their share and in spite of repeated demands, the petitioner was not paying them rents. They issued Exs.P-1 and P-3 legal notices to petitioner, but petitioner refused to receive them, and since he committed willful default in payment of rent from September, 2000 to August, 2006, he is liable to be evicted therefrom.

5. The petitioner filed a counter contending that he did obtain the R.C. schedule property under lease deed dt.26-12-1994 executed by him in favour of respondents' father and paternal uncles. He alleged that although he was regular in payment of rents, the respondents collected the rents but did not pass any receipts. He alleged that respondents had engaged an agent to collect rents upto August, 2006 and had not personally come to collect the rents. He denied that he had committed willful default in payment of rents.
6. Before the Rent Controller, the respondents examined P.W.1 and marked Exs.P-1 to P-6 while the petitioner examined R.W.1 and marked Exs.R-1 to R-36.
7. By order dt.28-06-2010, the Rent Controller allowed the R.C. with costs. The Rent Controller held that the petitioner cannot deny that respondents are not his landlords; that although the petitioner stated in his evidence that he can file documents to show that he paid rents covering the above period to the rent collector employed by respondents, since the said rent collector had not been examined, the petitioner had failed to prove that he had made the payment of rent for the above period to respondent. Rent Controller also held that according to petitioner though lease deed contemplated that rent receipts would be issued on payment of rents, petitioner had not explained why he did not obtain such receipts from the rental collector. Rent Controller also held that in spite of the demands for payment of rents under Exs.P-1 and P-3, the petitioner did not pay rents, that only after filing the R.C. he started sending the money orders for the period from 2007 onwards and this amounts to willful default

in payment of rents. The Rent Controller therefore held that petitioner had committed willful default in payment of rents for the above period and he is liable to be evicted from the R.C. schedule premises.

8. The petitioner preferred R.A.No.232 of 2010 before the Additional Chief Judge, City Small Causes Court, Hyderabad, who is the appellate authority under the Act. The said appellate Authority also confirmed the findings of the Rent Controller.
9. Challenging the same, this Revision is filed.
10. Learned counsel for petitioner firstly contended that respondents were not entitled to file the R.C. for eviction of petitioner since the lease deed entered into by petitioner was with their father and his brothers.
11. In **Shankaramma and others Vs. Mohammed Abdul Hameed and another**, a Division Bench of this Court has held that if there is a sale or alienation by a landlord pending the R.C. case, the purchaser can continue the case or even file the case against a tenant, who committed default in payment of rent prior to sale even though there is no assignment of right in his favour to recover arrears. The Division Bench held that attornment under Section 109 of the Transfer of Property Act, 1882 is not necessary. It observed:

“If the transfer of the landlord's right is valid, and even if the tenant has not attorned in favour of the transferee, the lease continues, the lessee will be entitled to the statutory protection under the Rent Control Act. He cannot be evicted except in accordance with the provisions of that Act. This is abundantly made clear from the definition of 'landlord' under Section [2\(vi\)](#) of the Rent Control Act, which reads as follows:

'Landlord' means the owner of a building and includes a person who is receiving or is entitled to receive the rent of a building, whether on his

own account or on behalf of another person or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant.

22. The transferee of a landlord is thus entitled to collect rent as of right and he is a landlord under the inclusive definition. Since the attornment is not necessary under Section [109](#) of the Transfer of Property Act, the tenant cannot dispute the right of transferee to maintain a suit for eviction or to claim rent.”

12. In the present case, the respondents have pleaded that under a family partition they inherited the R.C. schedule premises and that the partition took place on 30-04-2005. No doubt prior to the said partition under the lease deed dt.26-12-1994 the petitioner had been granted the lease by respondents' father and his brothers. Having regard to the principle laid down in the above case, since the respondents had obtained the property in the partition prior to the filing of R.C., notwithstanding that there is no specific attornment under Section 109 of the Transfer of Property Act, 1882, they are entitled to file the R.C. against petitioner on the ground that he committed default in payment of rent prior to the partition. Therefore, this contention is without any merit.
13. Learned counsel for petitioner further contended that petitioner had paid rents to the respondents through the rent collector Kausar and therefore the petitioner cannot be said to have committed default in payment of rent. The person, who collected the rent allegedly from the petitioner by name Kausar as an agent of respondents, was not examined by petitioner in support of his plea. Therefore this contention is also without any merit.
14. Admittedly, petitioner has refused the legal notices Ex.P-3 dt.17-04-2005 and Ex.P-1 dt.01-12-2005 under Exs.P-4 and P-2.

In the said notices Exs.P-3 and P-1, the respondents had demanded the petitioner to pay the rents for the above period. The petitioner as R.W.1 has also admitted that the address mentioned in Exs.P-1 and P-3 belonged to him. Therefore his refusal to receive the said notices also suggests that his failure to pay the rents to respondents was willful.

15. Learned counsel for petitioner lastly contended that the arrears of rents were deposited at the time of filing of the appeal R.A.No.232 of 2010 before the appellate authority and the respondents received all the arrears of rents, and therefore the R.C. should have been dismissed. Learned counsel for respondents denied that respondents have withdrawn the amounts deposited by petitioner to the credit of the R.C. Be that as it may, any such deposit pending appeal by petitioner does not wipe away the willful default committed by him.
16. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. However, time for vacating the R.C. schedule premises is granted to petitioner upto 08-01-2016 subject to petitioner filing an undertaking within two (02) weeks from the date of receipt of a copy of this order before the Rent Controller that he would vacate the premises by the said date and also that he would deposit the arrears of rents, if any, to the credit of the R.C. within four (04) weeks from the date of receipt of a copy of this order. In default of petitioner complying with any of the above conditions, the order of eviction passed by the Rent Controller as well as the appellate authority can be enforced by respondents forthwith. No costs.
17. As a sequel, miscellaneous petitions pending if any, shall stand

closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 14-10-2015

Vsv