

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

C.R.P.Nos. 4040, 4041, 4042 AND 4043 of 2013

COMMON ORDER:

Since the petitioner and the 1st respondent are parties in all the Revisions and the same issue arises for consideration in all the cases, they are being disposed of by this common order.

2. Heard Sri K.Chidambaram, Counsel for the petitioner and Sri Ch.Dhanumjaya, Counsel for the 1st respondent in all the revisions and Sri J.SrinivasaRao, Counsel for the 2nd respondent in all the revisions and also for the 3rd respondent in CRP.No.4042 of 2013.

3. The petitioner herein is the brother of the 1st respondent. The 1st respondent filed RCC Nos.1 of 2012, 2 of 2012, 3 of 2010 and 3 of 2012 before the Rent Controller-cum-Principal Junior Civil Judge, Palakol seeking eviction of the respective 2nd respondents in each of the revisions as well as the 3rd respondent in C.R.P.No.4042 of 2013 under Section 10(1)(2) and (3) of A.P. Buildings (Lease, Rent and Eviction) Control Act,1960 (for short 'the Act') on the ground of willful default in payment of rents and other grounds.

4. In the said RCCs, the 1st respondent contended that the property originally belonged to his father by name Bondada Ramalingaiah and that under a registered Will dt.06.01.1993 and Codicil dt.19.03.1993, the RCC schedule premises were bequeathed to him. He contended that Bondada Ramalingaiah died on 26.05.1997 and on his death, under the above Will and Codicil, he became the absolute owner of the RCC schedule properties, that the respective 2nd respondents and 3rd respondent in CRP No.4042 of 2013 are his tenants and they are liable to be evicted for committing willful default in payment of rents and on other grounds.

5. Petitioner herein filed I.A.No.609 of 2012 in RCC No.1 of 2012, I.A.No.610 of 2012 in RCC No.2 of 2012, I.A.No.612 of 2012 in RCC No.3 of 2010 and I.A.No.611 of 2012 in RCC No.3 of 2012 under Order 1 Rule 10 CPC to implead himself as a party in the RCCs. He contended that RCC schedule properties are joint family properties and that Bondada Ramalingaiah, his father, died intestate on 26.05.1997. He also contended that the Will dt.06.01.1993 alleged to have been executed by Bondada Ramalingaiah in favour of the 1st respondent is not true and it is a fabricated, forged and void document. He contended that he had filed a partition suit in O.S.No.99 of 2009 before the Senior Civil Judge, Narsapur, for partition of all the joint family properties and for allotment of 1/13th share to him. He also claimed that he had filed application I.A.No.545 of 2011 in the said partition suit to implead all the tenants; that since he is a co-owner of the joint family properties including RCC schedule properties, he is a necessary and proper party to the RCCs; and, therefore, he should be impleaded.

6. Counter-affidavits were filed by the 1st respondent in all the revisions opposing the said applications and contending that RCC schedule properties are neither ancestral nor joint family properties and that the Will relied upon by the 1st respondent is true and valid; that the petitioner is not entitled to be impleaded as a party in the RCCs and he has filed the applications only to drag on the matter.

7. By separate order dt.25.06.2013, the Rent Controller dismissed all these applications. He held that the genuineness of the Will and Codicil is being disputed by the petitioner and admittedly a suit for partition in O.S.No.99 of 2009 is pending; that the RCC schedule properties are already included in the schedule to the said suit; and that even assuming that the contention of the petitioner is correct that

he and 1st respondent are co-owners, under law, an eviction petition filed by one of the co-owners against the tenants would not affect the rights of other co-owner. It held that Rent Controller Court has limited jurisdiction and the validity of the Will and Codicil cannot be adjudicated by it and can only be adjudicated in a civil suit.

8. Challenging the same, these revisions are filed.

9. Sri K.Chidambaram, Counsel for the petitioners has contended that the orders passed by the Court below are not correct and that since the provision of Order 1 Rule 10 CPC apply to the proceedings before the Rent Controller, the Court below ought to have impleaded the petitioner as party in the RCCs. He also contended that the Will set up by the 1st respondent is not valid, that the suit filed by the petitioner is likely to take some more time to be adjudicated and in the meantime, if the Rent Controller cases are decided in favour of the 1st respondent, then the 1st respondent would take possession of the RCC schedule premises to the detriment of the petitioner.

10. Counsel for the 1st respondent, Sri Ch.Dhanumjaya, opposed the said contentions and submitted that the petitioner, who is seeking impleadment is actually seeking a decision from the Rent Controller on the question of title and the said question cannot be decided by the Rent Controller in view of the limited jurisdiction conferred on him; if the petitioner has any claim, he should approach the civil Court and get adjudication there on the question of title; and that since the petitioner has already filed partition suit in O.S.No.99 of 2009, petitioner cannot be granted any relief herein. He also placed reliance on the judgment of the Division Bench of this Court in **Soni Bhuthulasi vs. Kunda Nageswara Rao**^[1].

11. I have noted the submissions of both sides.

12. From the facts narrated above, it is clear that the 1st respondent had filed RCCs for the eviction of respective 2nd respondents and 3rd respondent in CRP No.4042 of 2013 alleging that he is the owner of the RCC schedule properties under a Will dt.06.01.1993 executed by his father and also a Codicil Ex.R2 dt.19.03.1993 executed by his father. He contends that his father died on 26.05.1997 and pursuant to the said Will and Codicil, he became the owner of the RCC schedule properties. His further contention is that the respective 2nd respondents and 3rd respondent in CRP No.4042 of 2013 have committed willful default in payment of rents and also other acts and so they are liable to be evicted there from.

13. The petitioner wanted to get impleaded in these cases contending that the Will and Codicil set up by the 1st respondent are not true and valid and that the RCC schedule properties are joint family properties belonging to himself and the 1st respondent. Therefore, it is clear that the title over the RCC schedule properties is being disputed by the petitioner and his case is that the RCC schedule properties are joint family properties, while the 1st respondent contends that they are not.

14. Thus, the main issue in RCCs is as to the existence of relationship of landlord and tenant between the 1st respondent and the other respondents. The issue of title to the RCC schedule properties cannot be gone into in these proceedings, since the Rent Controller has not been conferred the jurisdiction to decide the said issue under the provisions of the Act.

15. The Division Bench of this Court in **Soni Bhuthulasi**(1 supra) held that a Rent Controller, who is hearing a petition by a landlord seeking eviction, is competent to decide the question whether the denial or claim of the landlord's title by the tenant is bonafide and if it is

bonafide, the landlord can sue for eviction in the civil Court on one or other grounds mentioned in Sections 10, 12 or 13 of the Act. It held that if it is not bona fide, the landlord can get eviction before the Rent Controller in as much as such a denial or claim of a tenant as regards the landlord's title which is not bonafide, is a ground for eviction and Rent Controller can direct the eviction of the tenant on the said ground. The Bench held that the provisions of Section 10(1) read with Section 10(2) (vi) of the Act indicate that even when a tenant, who is a party to the eviction proceedings, raises a dispute or claim as to the title of the landlord, the Rent Controller has no jurisdiction to decide whether the landlord has title to the property or not and the limited jurisdiction that is conferred by the Act on the Controller is only to decide whether the denial or claim by the tenant is bonafide or not. It held that if that is the position of a tenant, who is a party to the eviction petition, a third party who proposes to get impleaded in the eviction proceedings before the Rent Controller is afortiori precluded from joining in the eviction proceedings for the purpose of a decision on the question as to the landlord's title. The Bench held that the Act is a special Act by which statutory protection is framed to a tenant and at the same time, landlord is intended to have a speedier remedy than in a regular suit, but it was not the intention of the legislature that complicated questions of title can be adjudicated by the Rent Controller. It held that proper procedure for the third party would be to file a regular civil suit before a civil Court for deciding the issue as to the question raised by him and obtain appropriate relief. It held that a third party seeking impleadment is seeking a decision on the question of title not incidentally and for him the question of title is the main question in which he is interested. This is an important consideration to deny a third party any right to get impleaded in an eviction case before the Rent Controller for the purpose of raising a dispute as to title.

16. In view of the decision of this Court referred to above, I am of the opinion that the Court below rightly dismissed the applications filed by the petitioner to implead him as a party in the respective RCCs. Therefore, I do not find any merits in these Revisions.

17. Accordingly, all the Civil Revision Petitions are dismissed. There shall be no order as to costs.

18. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

30th June, 2015.

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