

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

CIVIL REVISION PETITION No.5241 of 2013

ORDER:

This Civil Revision Petition is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act') challenging the Order dt.23-07-2013 in R.C.A. No.1 of 2013 of the Senior Civil Judge-cum-Rent Control Appellate Authority, Kadapa confirming the order dt.11-10-2012 in R.C.C.No.1 of 2009 of the Rent Controller-cum-Principal Junior Civil Judge, Kadapa.

2. The RCC schedule premises is a residential house originally owned by 2nd petitioner and her husband, who had purchased it under registered sale deed dt.15-04-1985 from its previous owner Pullagura Gangulaiah. It is not disputed that 2nd petitioner and her husband sold it away to respondent under registered sale deed dt.24-10-2005 for a sum of Rs.3,94,000/-. At the time of sale, the 2nd petitioner and her husband were dwelling in the said property. The 1st petitioner is the son-in-law of 2nd petitioner.

3. According to respondent, when she demanded for physical possession of the property from 2nd petitioner and her husband, they requested that they be allowed to

retain possession of property on condition that they would pay back the sale consideration of Rs.3,94,000/- to respondent within three years along with interest, and on humanitarian grounds, she agreed for the said proposal and agreed to re-convey the property to them on condition that they should pay a sum of Rs.3,50,000/- with interest @ 24% p.a. on or before 24-10-2008; if they fail to pay the same within the stipulated time, the re-conveyance agreement stands cancelled and the property becomes absolute property of respondent.

4. The respondent alleged that 2nd petitioner and her husband did not pay the amount as agreed; respondent then demanded on 24-10-2008 the petitioners to vacate and hand over possession of the property, but petitioners requested that they be allowed to continue in the property as tenants on a monthly rent of Rs.750/-; that she accepted that proposal and allowed the petitioners to continue therein as tenants on a monthly rent of Rs.750/- w.e.f. 24-10-2008; she also got constructed a compound wall; in the 1st week of November, 2008, when she demanded the petitioners to pay rent payable by 25-11-2008, they did not pay the same and requested that they would pay the said rent in the 1st week of December,

2008; and in the

1st week of December, 2008, when she again made a demand for rent, they did not pay. She then got issued legal notice Ex.P-2

dt.31-01-2009 demanding payment of arrears of rent and also eviction of petitioners. No reply to the said legal notice was given. Therefore, respondent filed R.C.C.No.1 of 2009 before the Rent Controller-cum-Principal Junior Civil Judge, Kadapa for eviction of petitioners on the ground of willful default in payment of rents.

5. The petitioners were initially set exparte, but subsequently, 2nd petitioner filed petition to set aside the exparte order passed against her. It was allowed and she filed a counter. In the counter, she contended that 1st petitioner was not residing there, but his wife, who is daughter of 2nd petitioner was residing with her children. She alleged that respondent and 1st petitioner colluded with each other and filed R.C.C. against her excluding 1st petitioner's wife, that

1st petitioner had married another lady and was living with her, that he was also addicted to bad habits and borrowed money from respondent and others. She denied that herself and her husband received any consideration from respondent. She alleged that respondent came to 2nd petitioner's house and used force

against petitioners and beat 2nd petitioner and her daughter number of times; on account of fear, the 2nd petitioner and her husband mortgaged their self-acquired property in 2005 and in the said mortgage deed, it was stated that 2nd petitioner and her husband received Rs.3,94,000/- from respondent and executed mortgage deed; but in fact no amount was received. She also claimed that on instructions of respondent, one G.Venkata Siva again prepared an agreement in favour of 1st petitioner's wife executed by 2nd petitioner and her husband stating that 1st petitioner would clear the mortgage debt on or before 24-10-2008, but respondent did not sign the said agreements. She alleged that respondent kept the said agreement with her and handed over a photostat copy to 1st petitioner. She also took a plea that 9 years prior to the filing of the RCC case, 2nd petitioner's husband had executed a gift deed in favour of 2nd petitioner's son and daughters regarding the mortgaged property making four equal shares. She stated that on account of threats from respondent, 2nd petitioner's husband died 9 months back and the health of 2nd petitioner was also spoiled. She alleged that respondent cheated 2nd petitioner's daughter and played fraud against them and kept some promissory

notes with her for unlawful gain; that her daughter lodged a complaint against respondent, her husband and the Document Writer Venkata Siva before Lok Adalat and also the Superintendent of Police, Kadapa on 27-09-2009 and 13-01-2009; the matter was enquired into; and both parties were directed to approach Civil Court to resolve their dispute over the property. She denied that she is a tenant of the property and contended that she never requested at any time that she be permitted to stay in it and she was not a defaulter in payment of rent since she was not a tenant.

6. By order dt.11-10-2012, the Rent Controller allowed the R.C.C. It held that denial of title of respondent by 2nd petitioner in respect of RCC schedule property was not *bonafide*; there was a jural relationship of landlord and tenant between the respondent and petitioners; the petitioners committed default in payment of rents to respondent; and therefore they are liable to be evicted from the RCC schedule property.

7. The Rent Controller noted that the respondent had contended that the 2nd petitioner and her husband had sold RCC schedule property to her under Ex.P-1, Ex.P-5 endorsement issued by Municipal Commissioner, Kadapa shows that her name was mutated in the revenue records, and Exs.P-4, P-6 to P-8 tax receipts show that

she was paying taxes for the RCC schedule property. It held that petitioners' plea that respondent had obtained a mortgage deed from her and her husband by threatening them for the debt due by

1st petitioner was not established since copy of the mortgage deed was not filed; R.W.2, daughter of 2nd petitioner, did not say anything about the details of said mortgage; both R.Ws.1 and 2 admitted about handing over of link documents of Ex.P-1 to respondent; when confronted with Ex.P-1, they also admitted the photos of 2nd petitioner and her husband and respondent therein; and R.W.2 also admitted that she and 1st petitioner signed as attestors to the said document. It also noted that respondent had constructed the compound wall surrounding the petition schedule house in the year 2009.

It therefore held that this evidence shows that 2nd petitioner and her husband sold the schedule property under Ex.P-1 sale deed and if 2nd petitioner is of the view that the said sale deed is obtained by playing fraud or threats, she or her husband have to file civil Suit, but not did so even though Ex.P-1 was executed in 2005. It held that, having executed a registered sale deed in favour of respondent, the 2nd petitioner could not have denied the title of respondent in the RCC schedule property and the denial of title is not *bonafide*.

8. On the aspect of jural relationship between respondent and petitioners, it held that the evidence of P.Ws.1 and 2 proves that there was a jural relationship between respondent and petitioners. It held that P.W.2 is an independent witness and he stated that he was present when respondent let out the RCC schedule premises to petitioners in October, 2008 @ Rs.750/- p.m. as rent and nothing was elicited in his cross-examination to disbelieve his evidence. It also held that since no reply notice was given to Ex.P-2 issued by respondent, that also indicates the existence of jural relationship between the parties. Having regard to the said finding, it held that since the petitioners had not paid rents in spite of receiving Ex.P-2 legal notice, they are entitled to be evicted from the RCC schedule house.

9. The petitioners filed R.C.A.No.1 of 2013 before the Senior Civil Judge-cum-Rent Control Appellate Authority, Kadapa. The said appeal was also dismissed confirming the findings of the Rent Controller.

10. The Rent Control Appellate Authority relied on the evidence of P.W.2 to find that there was jural relationship between respondent and petitioners. It held that denial of title by petitioners is not *bonafide* after they had executed sale deed in favour of respondent. It also held that the plea of execution of gift deed by the husband

of 2nd petitioner in favour of his son and daughters 9 years prior to filing of RCC cannot be accepted since no such gift deed is filed.

11. Challenging the same, this Revision is filed.

12. Heard Sri Koneti Raja Reddy, learned counsel for petitioners and Sri V.R.Reddy Kovvuri, learned counsel for respondent.

13. The learned counsel for petitioners contended that Ex.P-1 sale deed was obtained by fraud and coercion by 2nd petitioner and her husband and therefore, the denial of title by petitioner is *bonafide*. He also contended that there is no jural relationship of landlord and tenant between respondent and petitioners in as much as no proof of payment of rent by petitioners to respondent has been adduced by respondent. According to him, at least one instance of such payment of rent must be established by respondent to show the existence of jural relationship of landlord and tenant between respondent and petitioners. He contended that in the absence of jural relationship of landlord and tenants, there is no question of payment of rent to respondent by petitioners. He contended that the possession of petitioners of the subject property subsequent to execution of sale deed Ex.P-1 has to be construed as possession as licensee/trespasser and the only option

available to respondent was to approach the Civil Court and seek eviction of petitioners.

14. The learned counsel for respondent/landlord supported the findings of the Courts below and contended that concurrent findings on facts by the Courts below are not liable to be interfered in exercise of Revisional jurisdiction under Section 23 of the Act.

15. I have noted the submissions of both sides.

16. Ex.P-1 registered sale deed executed by 2nd petitioner and her husband in favour of respondent was marked by respondent. R.Ws.1 and 2 admitted the photographs of 2nd petitioner and her husband as well as respondent in it, and R.W.2 admitted that she and her husband, 1st petitioner signed as attestors therein. The 2nd petitioner also admitted in her evidence as R.W.1 that she handed over the link documents of Ex.P-1 to respondent and that the respondent even constructed a compound wall surrounding the subject property in 2009.

17. Thus, there is a conveyance of title of RCC schedule property by 2nd petitioner and her husband in favour of respondent. If really there was a gift deed executed by husband of 2nd petitioner in favour of his son and daughters 9 years prior to RCC, the husband of 2nd petitioner would not have been a party to Ex.P-1 sale

deed transferring title to RCC schedule property in favour of respondent. In fact the said gift deed is not even filed by petitioners. In this view of the matter, I am of the opinion that both the Rent Controller and the Rent Control Appellate Authority under the Act rightly held that the denial of respondent's title by petitioners is not *bonafide*.

18. Coming to the question of existence of jural relationship of landlord and tenant between respondent and petitioners, the respondent in RCC has specifically alleged that on 24-10-2008 she had leased out the property to petitioner on a monthly rent of Rs.750/- and she reiterated the same in her evidence as P.W.1. P.W.2, who had retired as A.E.O. in Agricultural Department and who was an independent witness, has also asserted in his evidence that he was present at the time of letting of the RCC property to petitioners in October, 2008. He denied that he is relative of respondent. Nothing is elicited in his evidence to discredit it. The contention of the learned counsel for petitioners that at least one instance of payment of rent by petitioners to respondent should have been proved to believe the existence of jural relationship between the parties cannot be accepted in view of the fact that in the present case, according to respondent, not once did the petitioners pay rent after taking the RCC schedule property on lease on 24-10-2008. Since the existence of jural relationship is proved by the evidence of

P.Ws.1 and 2, merely because evidence of payment of rent is not there (particularly when the petitioners had never paid rent to respondent), it has to be held that there is willful default in payment of rents by petitioners to respondent.

19. I am thus in complete agreement with the concurrent findings of both the Rent Controller as well as the Rent Control Appellate Authority and do not find any warrant to interfere with the concurrent findings of facts. I do not find any merit in the Revision and the same is accordingly dismissed without costs. Time is granted to petitioners till 30-04-2015 to vacate the RCC schedule property on condition (i) that the petitioners pay all the arrears of rent till 31-01-2015 on or before 28-02-2015; (ii) they shall pay the rent for the month of February, 2015 on or before 05-03-2015, (iii) the rent for the month of March, 2015 on or before 05-04-2015 and (iv) the rent for April, 2015 on or before 30-04-2015. Petitioners shall also file an undertaking that they shall comply with the above conditions and deliver peaceful and vacant possession of the RCC schedule property, within two weeks from the date of receipt of a copy of this order before the Rent Controller-cum-Principal Junior Civil Judge, Kadapa. In default of filing such undertaking or in paying arrears of rents as well as rents as stipulated above, the petitioners

shall be liable to be evicted forthwith.

20. As a sequel, all miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-01-2015

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