

HONOURABLE SRI JUSTICE S.RAVI KUMAR
SECOND APPEAL Nos.396 OF 2004 AND 414 OF 2004,

&

CIVIL REVISION PETITION Nos.2069 OF 2004 AND 2073 OF 2004

Dated 1st May, 2015

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SECOND APPEAL No.396 OF 2004

Between:

Tanuku Taluk Village Officers' Association, represented by its
Secretary A.V.S.Prabhakar Rao, Illendalaparru, Tanuku.

..Appellant.

And:

Tanuku Municipality represented by the Commissioner, Tanuku,
West Godavari District and others.

..Respondents.

SECOND APPEAL No. 414 OF 2004,

Between:

Tanuku Taluk Village Officers' Association, represented by its
Secretary A.V.S.Prabhakar Rao, Illendalaparru, Tanuku.(TDMC)

..Appellant.

And:

Tanuku Municipality represented by the Commissioner, Tanuku,
West Godavari District.

..Respondent.

CIVIL REVISION PETITION No.2069 OF 2004.

Between:

Tanuku Taluk Village Officers' Association, represented by its
Secretary A.V.S.Prabhakar Rao, Illendalaparru, Tanuku.(TDMC)

..Petitioner.

And:

Tanuku Municipality represented by the Commissioner, Tanuku,
West Godavari District.

..Respondent.

CIVIL REVISION PETITION No.2073 OF 2004.

Between:

Tanuku Taluk Village Officers' Association, represented by its
Secretary A.V.S.Prabhakar Rao, Illendalaparru, Tanuku.(TDMC)

..Petitioner.

And:

Tanuku Municipality represented by the Commissioner, Tanuku,
West Godavari District.

..Respondent.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL Nos.396 OF 2004 AND 414 OF 2004,

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CIVIL REVISION PETITION Nos.2069 OF 2004 AND 2073 OF 2004

COMMON JUDGMENT:

These two appeals arise out of judgment dated 21-1-2004 in
A.S.Nos.69 of 1996 and 70 of 1996 on the file of Senior Civil Judge,

Tanuku.

C.R.P. No.2073 of 2004 is preferred against the order dated 21-1-2004 in C.M.A.No.8 of 1997 and C.R.P.No.2069 of 2004 is preferred against order dated 21-1-2004 in C.M.A.No.13 of 1998. This C.M.A.No.13 of 1998 is preferred against orders dated 14-5-1997 in I.A.No.268 of 1997 in R.C.C.No.5 of 1997 whereunder the Court below dismissed I.A.No.268 of 1997 in R.C.C.No.5 of 1997 which is filed for issue of cheque for Rs.42,400/-. C.M.A.No.8 of 1997 is preferred against eviction order passed by the Rent Controller (Principal District Munsif, Tanuku) dated 20-1-1997 in R.C.C.No.5 of 1987 and appellate authority under the Rent Control Act reversed eviction order of the Rent Controller and allowed C.M.A.No.8 of 1997 and dismissed cheque petition filed on behalf of revision petitioner which was confirmed in C.M.A.No.13 of 1998.

The brief facts leading to appeals are as follows:

Appellants herein filed O.S.No.384 of 1986 for the relief of Permanent Injunction restraining the respondents herein from effecting repairs to the suit schedule property or demolishing it or doing an act changing character of the suit building.

Appellant herein filed O.S.No.226 of 1987 for recovery of Rs.10,772/- being the arrears of rent and interest thereon from 1-9-1984 to 31-3-1987 for a period of 31 months .

Trial court conducted joint trial of these two suits and evidence is recorded in O.S.No.384 of 1986. On behalf of appellant herein four witnesses are examined and 26 documents are marked and on behalf of respondent in Second Appeal No.414 of 2004, one witness is examined and no documents are marked. On an overall consideration of oral and documentary evidence, trial court decreed both the suits, aggrieved by which, the respondent in Second Appeal No.414 of 2004 preferred two separate appeals to the Senior Civil Judge, Tanuku. Challenging the judgment and decree in O.S.No.384 of 1986, A.S.No.69 of 1996 is filed and challenging the judgment and decree in O.S.No.226 of 1987, A.S.No.70 of 1996 is filed.

Learned appellate judge on reappraisal of evidence, allowed both the appeals by setting aside the judgment and decrees of the lower court in both the suits. Now aggrieved by the judgment in A.S.No.69 of 1996, S.A.No.396 of 2004, against judgment in A.S.No.70 of 1996, S.A.No.414 of 2004 are preferred.

This court while admitting these two second appeals, formulated the following as the substantial question of law.

Ground No.16.

“a) Whether the lower appellate court is right in holding that plaintiff society became defunct without there being any evidence to that effect?

b) Whether the immovable property purchased by a registered society under registered sale deeds shall automatically vests with its admitted tenant without there being any deed of conveyance.

c) Whether a tenant while admitting that it was only a tenant inducted into possession for a rent can claim ownership over the very same property contrary to the provisions of Section 116 of the Indian Evidence Act.”

Parties are herein after referred to as plaintiff and defendant as arrayed in the suits. In O.S.No.384 of 1986 is filed against four defendants whereas O.S.No.226 of 1987 is filed against sole defendant. This sole defendant is D.1 in O.S.No.384 of 1986 and the present dispute is mainly between plaintiff and this sole defendant.

According to plaintiff, an extent of Ac.0-48 cents of land in R.S.No.67 of 5A notified and designated as Karanalasatram was purchased by plaintiff on 26-4-1959. There was an old building constructed by the plaintiff's vendor in this Ac.0-48 cents of land and it was leased out to Tanuku Grampanchayat on a monthly rent of Rs.150/- and after purchasing by plaintiff in the year 1959, Grampanchayat used to pay rent to plaintiff. In or about 1979, Tanuku Grampanchayat upgraded into municipality with effect from 1-10-1979 and the site and building deemed to house the Municipal office on the same premises. First defendant Municipality used to pay rent to the plaintiff and obtain receipt from plaintiff and on the application of plaintiff, first defendant after following procedure enhanced rent from Rs.150/- to Rs.300/- per month through a resolution dated 31-7-1981 with effect from 1-4-1981 and the rent was accordingly paid till the end of 1984. First defendant discontinued payment of rent in September, 1984 when demanded, it has been postponing. While so, in September, 1986, plaintiff came to know that first defendant Municipality entrusted repairs work of building to fourth defendant, without the consent of plaintiff and therefore, plaintiff is constrained to file the suit for permanent injunction and thereafter, suit for recovery of rent due for 31 months.

First defendant i.e., Municipality mainly resisted both the suits and the suit as filed is not maintainable under law as there is no institution with the plaintiff name in view of abolition of post of Village Offices. It is contended that the membership of the Village Officers under plaintiff society automatically came to an end and plaintiff society has become defunct (the society is not in existence) and there are no members of plaintiff's society and no person can usurp the powers of defunct society (the society is not in existence) to collect the money for and on behalf of defunct society (the society is not in

existence). It is further contended that relationship of landlord and tenant ceases because of the non-existence of plaintiff's society and the properties of defunct society have to be diverted to public institutions and the suit is not maintainable and liable to be dismissed.

As already referred above, it is admitted case of both parties that plaintiff schedule property has been taken on lease by Tanuku Grampanchayat on a monthly rent of Rs.150/- which includes building portion and on an extent of Ac.18.50 square yards and the remaining portion is under the possession and enjoyment of the plaintiff. First and foremost objection of plaintiff is that the Tanuku Municipality i.e., first defendant is estopped from contending that there is no relationship of landlord and tenant in view of Section 116 of the Evidence Act.

Advocate for appellant submitted that learned trial judge rightly appreciated Section 116 of Evidence Act but the appellate court without examining provision simply reversed the well considered findings of the trial court.

On the other hand, advocate for defendant submitted that the main objection taken in the suit is with regard to maintainability of the suit but the trial court without understanding the objection in a right perspective decided the matter under a mistake of impression that defendant has denied the relationship of landlord and tenant and the appellate court rightly rectified the mistake and accordingly decided the matter.

Now the point that would arise for my consideration in these appeals is whether there is any substantial question of law involved in this appeal?.

POINT:

The main objection taken in the written statement is with regard to maintainability of the suit and the locus-standi of P.W.1 in instituting these two suits.

P.W.1 in his evidence stated that he was elected as Secretary of the appellant society in the year 1984 and thereafter, no elections took place to the said society and he also admitted that plaintiff is not sending any information to the District Registrar as per the provisions of Societies Registration Act. P.W.1 even admitted in cross-examination that he has not gone through the by-laws of the society and that the society is not maintaining books and registers as prescribed under bye law principle 16. Learned appellate judge, after scanning evidence of P.W.1 and perusing memorandum of plaintiff society which is marked under Ex.A.9 held that as on the date of the suit, society was not in existence and P.W.1 styling himself as

Secretary cannot maintain the suit.

As seen from the material, trial judge has taken these aspects as the internal affair of the society and defendant has no right to question them. No doubt, with regard to maintaining of register, sending of required information to the Registrars of the Society is internal affair of the society and its members and the 3rd party may not have right to question them. But here, the very status of the plaintiff for maintaining suit was questioned in the written statement and a specific plea was taken about cause of action and maintainability of the suit and though no separate issue is framed as to the maintainability, the same was considered as if the defendant has denied relationship of landlord and tenant.

As seen from the material, it is clear that after abolition of post of Village Officers, the plaintiff society became defunct (the society is not in existence), both factually and as per operation of law under Section 4 of Society Registration Act.

When such a specific stand is taken on behalf of defendant, the burden is on plaintiff to prove prima facie that the society which filed the suit was in existence as on the date of suit and that P.W.1 is authorized to sue on behalf of society. There is absolutely no material on record to show at least prima facie that plaintiff society was in existence as on the date of suits.

On the other hand, evidence of P.Ws.1 to 4 positively show that after, 1984, no activities were taken up by the plaintiff's society including elections. Therefore, as rightly contended by advocate for defendant, Section 116 of the Evidence Act has no application to the case on hand, as the plaintiff failed to prove existence of society as on the date of filing of the suits and that he was authorized to sue on behalf of society, the appellate court was right in reversing the findings of the trial court and dismissing the suits.

With regard to revisions, revision petitioner herein filed eviction petition on the ground of willful default and for committing acts of waste resulting damage to the property and for denying title of the landlord. Here also, the objection taken by the respondent in eviction petition is that the petition is not maintainable by a defunct of the society (the society is not in existence) and that P.W.1 has no right to sue on behalf of society. Learned Rent Controller went on considering the pleadings as if the respondent has denied the ownership forgetting the fact that they only questioned the maintainability of the petition as filed and the very same Rent Controller in case of cheque petition upheld the objection of the

respondent that P.W.1 is not entitled to represent the society and on that ground dismissed the cheque application.

As already preferred above while considering the same dispute in the suits between the parties, the existence of society as on the date of instituting these proceedings is not at all established and the petitioner failed to show that he can sue on behalf of the society. So the learned appellate authority has not committed any illegality or irregularity in appreciating facts or law and there are absolutely no grounds to interfere with the findings of the trial court.

On a scrutiny of the entire material, I am of the view that appellate court has not committed any error, either in appreciating the fact or in applying law and that no substantial question of law is involved in these two appeals, as such, both the appeals are devoid of merits.

For these reasons, both the appeals are dismissed. No costs.

For the reasons stated above, these two revision petitions are also dismissed. No costs.

As a sequel to the disposal of these appeals and revisions, the Miscellaneous Petitions, if any, pending in both the appeals and revisions, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 1st May, 2015.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dated 1st May, 2015

Dvs