

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRP No.2270 of 2006

ORDER:

1 This revision is preferred challenging the order dated 30.11.2005 passed in RCA No.5 of 1997 on the file of the Principal Senior Civil Judge, Guntur wherein and whereby the order dated 21.11.1996 passed in R.C.C.No.4 of 1992 on the file of Rent Controller-cum-Principal District Munsif, Guntur was confirmed.

2 The parties to the present revision will hereinafter be referred to as they are arrayed before the Rent Controller in order to avoid confusion.

3 The petitioner is an association duly registered under the provisions of the Societies Registration Act vide registration No.82/71. Late Pothakamuri Sriramulu and late Pothakamuri Parabrahmacharyulu are own brothers. Sriramulu was given in adoption to late Pothakamuri Narasimhacharyulu and late Parabrahmacharyulu was given in adoption to late Pothakamuri Kotaiahcharyulu. The adopted fathers of said Narasimhacharyulu and Kotaiahcharyulu are own brothers. Smt. Visalakshmamma is the wife of Parabrahmacharyulu and they were blessed with a son by name Ramakoteswara Rao. After the death of Parabrahmacharyulu and Visalakshmamma, Ramakoteswara Rao succeeded the self-acquired property of his parents. On 20.05.1979 Ramakoteswara Rao died intestate unmarried. After the death of Ramakoteswara Rao, Sriramulu became the legal representative of Ramakoteswara Rao as reversioner under the provisions of the Hindu Succession Act. Sriramulu married one Sesharathnamma and they were blessed with two daughters. Sriramulu was not seen for the last 33 years and as such he was deemed to have died. Therefore, Sesharathnamma and her daughters became his sole surviving legal representatives. Hence Sesharathnamma had succeeded to the entire estate of late

Ramakoteswara Rao and took possession of his properties. They all belong to Viswa Brahmin community. With the consent of her daughters, Sesharathnamma executed a registered settlement deed dated 06.12.1979 in respect of the petition schedule property worth Rs.1,12,500/- in favour of the petitioner – Sangham for the benefit of poor students. On 26.11.1978 the respondent took possession of the petition schedule property on lease from late Ramakoteswara Rao on monthly rent of Rs.65/- payable on the last date of every month. After the death of Sesharathnamma, the respondent paid rents to the petitioner in pursuance of the settlement deed. The respondent committed wilful default in payment of rent. The petitioner got issued a legal notice to the respondent on 01.04.1981 directing him to pay rent to the petitioner. The respondent got issued a reply notice on 22.04.1981 with false and frivolous allegations. Hence the petitioner filed the petition under Sections 10 (2) (i) (iii) (vi), (3) (i) (a) of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 to evict the respondent.

4 The respondent filed counter denying the various averments made in the petition except that those which are specifically admitted therein. The premises under occupation of this respondent was taken on lease on a monthly rent of Rs.65/- during the lifetime of Ramakoteswara Rao. Ramakoteswara Rao died intestate unmarried. Sesharathnamma and her daughters are not the legal heirs of Ramakoteswara Rao. The settlement deed on which the petitioner – Sangham is placing reliance is a forged one. The property has to escheat to the Government and the same was informed to the Government. This respondent did not pay rent to any body after the death of Ramakoteswara Rao. The respondent has been staying in the premises even after the death of Ramakoteswara Rao thereby acquired title to the property by adverse possession. The Government

alone is entitled to initiate proceedings against this respondent. The petitioner has to approach the civil court to establish its rights, if any, on the petition schedule property. Hence the petition may be dismissed.

5 Basing on the above pleadings, the Rent Controller framed the following issues for determination:

- i. Whether there is relationship of landlord and tenant between the petitioner and the respondent?
- ii. Whether the denial of the title of the petitioner (sic. Respondent) is not bonafide?

6 During the course of trial, on behalf of the petitioner P.Ws.1 to 6 were examined and Exs.A.1 and A.2 were marked. On behalf of the respondent R.Ws.1 and 2 were examined but no documentary evidence was adduced. Exs.X.1 to X.3 were marked through R.W.2.

7 After appreciating the oral, documentary evidence and other material available on record, the Rent Controller arrived at a conclusion that there is no relationship of landlord and tenant between the petitioner and the respondent and dismissed the petition. Feeling aggrieved by the order of the Rent Controller, the unsuccessful petitioner preferred RCA No.5 of 1997 on the file of the Principal Senior Civil Judge, Guntur. The learned Principal Senior Civil Judge, Guntur, after re-appreciating the oral and documentary evidence arrived at a conclusion that there is no jural relationship of landlord and tenant between the petitioner and respondent and dismissed the appeal. Aggrieved thereby, the present revision petition is preferred by the unsuccessful petitioner.

8 The contention of the learned counsel for the petitioner is three fold: **a)** The Courts below have not properly appreciated the recitals of Ex.A.1 settlement deed and dismissed the petition on surmises and

conjectures. **b)** Both the Courts below have given undue weight to Exs.X1 to X.3 and dismissed the petition on untenable grounds and **c)** The findings recorded by the Courts below are not sustainable either on facts or on law.

9 *Per contra*, the learned counsel for the respondent submitted that the findings of the Courts below that there is no jural relationship of landlord and tenant between the petitioner and the respondent is supported by evidence much less legally admissible evidence. He further submitted that the Courts below have assigned cogent and valid reasons to its findings and hence there are no grounds much less valid grounds to interfere with the orders passed by the Courts below.

10 Now the points that arise for consideration in this appeal are:

- 1) Whether there is jural relationship of landlord and tenant between the petitioner and the respondent?
- 2) Whether the Courts below have committed any irregularity or illegality while arriving at a conclusion that there is no jural relationship of landlord and tenant between the petitioner and the respondent?

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POINT Nos.1 & 2:

11 The following admitted facts can be culled out from the facts pleaded and proved.

12 One Sriramulu and Parabrahmacharyulu are own brothers. Sriramulu was given in adoption to one Narasimhacharyulu whereas Parabrahmacharyulu was given in adoption to Kotaiahcharyulu. Kotaiahcharyulu and Narasimhacharyulu are sons of own brothers. The surname of the above referred persons is Pothakamuri. Sriramulu married one Sesharathnamma. Out of lawful wedlock, Sriramulu and Sesharathnamma were blessed with two daughters. Parabrahmacharyulu married Visalakshamma. Parabrahmacharyulu and Visalakshamma were blessed with a son by name

Ramakoteswara Rao. Sesharathnamma performed the marriages of her two daughters. Ramakoteswara Rao died on 20.05.1979 intestate and unmarried. The whereabouts of Sriramulu were not known for a period of 33 years immediately preceding to filing of the petition. On 20.11.1978 Ramakoteswara Rao let out the petition schedule property to the respondent on a monthly rent of Rs.65/-.

13 The entire controversy revolves around the settlement deed dated 06.12.1979 purported to have been executed by Sesharathnamma in favour of the petitioner – Sangham.

14 The predominant contention of the learned counsel for the petitioner is that after the death of Ramakoteswara Rao, Sriramulu succeeded the petition schedule property as his sole legal representative and thereafter his wife and daughters got the petition schedule property. As per the testimony of P.Ws.1 to 5, Sesharathnamma executed a settlement deed - Ex.A.1 in favour of petitioner – Sangham. Their testimony further reveals that the petitioner is claiming the property basing on the Ex.A.1 settlement deed. As per the testimony of P.W.6, who is the daughter of Sriramulu and Sesharathnamma, her father's whereabouts are not known for the last 33 years. Even as per the averments made in the petition, the whereabouts of Sriramulu were not known for the last 33 years. The burden of proof lies on the person who asserts a particular fact and desires the Court to adjudicate that fact in view of Section 101 of the Indian Evidence Act. The learned counsel for the petitioner has drawn my attention to Section 108 of the Indian Evidence Act to substantiate the stand taken by the petitioner. Presumption under Section 108 of the Evidence Act does not automatically give rise to presumption as to the exact death of the man missing. The specific stand of the petitioner is that Sriramulu succeeded the petition schedule property after the death of Ramakoteswara Rao on 20.05.1979. In view of the

specific stand taken in the petition, the burden lies on the petitioner to establish that Sriramulu was very much alive for certain period on or after 20.05.1979. The settlement deed in question was executed on 06.12.1979. Establishment of survival of Sriramulu in between 20.05.1979 and 05.12.1979 is a condition precedent to place reliance on Ex.A.1. The whereabouts of Sriramulu were not known for the last 33 years preceding to filing of R.C.C. in the year 1992. If the stand of the petitioner is taken into consideration, the possibility of survival of Sriramulu in between 20.05.1979 to 06.12.1979 or at least till the end of November 1979 is highly improbable and unbelievable. In other way, by any stretch of imagination, it cannot be presumed that Sriramulu was very much alive in between 20.05.1979 to 06.12.1979 in view of specific stand taken by the petitioner coupled with oral testimony of P.W.6 who is none other than the daughter of Sriramulu. In the set of facts and circumstances of the case narrated above, the stand of the petitioner that Sriramulu succeeded the property after the death of Ramakoteswara Rao falls to ground. When there is no evidence on record to establish that Sriramulu himself has succeeded the property after the death of Ramakoteswara Rao, the further question of succeeding of the property by the wife and children of Sriramulu is somewhat an illusion and myth. Adjudication of legal rights of the parties to the proceedings basing on illusions and delusions is contrary to basic principles of law.

15 The present petition is filed under the provisions of the Rent Control Act. There is no second opinion that the Rent Control Court may have some traits of the civil Court, but not a civil court in true and strict sense. The Rent Control Court was constituted with an object to resolve the disputes between landlord and tenant. It is a settled principle of law that a civil court alone has jurisdiction and power to grant the relief of declaration. Such a power was not vested with the Rent Control Court in view of its limited jurisdiction. Viewed from this

angle, the Rent Control Court has no jurisdiction to arrive at a conclusion that Sriramulu presumed to be died on or before 05.12.1979 by pressing into service Section 108 of the Evidence Act. The learned counsel for the respondent strenuously submitted that the argument advanced by the learned counsel for the petitioner is very easy to swallow but highly difficult to digest in view of the intrinsic legal implications and complications. If the argument advanced by the learned counsel for the petitioner is accepted without proper legal scrutiny as well as scope of Rent Control Act, certainly, it would amount to widening the scope of the Rent Control Court to that of a civil Court having power to grant the relief of declaration. The learned counsel for the respondent has drawn my attention to the ratio laid down in **Haji D. Hussain Vs. Vijavaraj**^[1] wherein it was held as follows:

“.....But when complicated question of title is involved in respect of the petition premises, the said question can be decided only by a Civil Court in a properly constituted suit by impleading all the legal heirs of Syed Ibrahim Jan and it is for the civil Court to decide whether any presumption can be drawn under Section 108 of the Evidence Act and such complicated questions can not be decided by the Court vested with limited jurisdiction under the provisions of the Karnataka Rent Control Act, 1961.....”

16 Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am unable to accede to the contention of the learned counsel for the petitioner that Ramakoteswara Rao predeceased Sriramulu, in the absence of a declaration to that effect by a competent civil Court having jurisdiction.

17 The next predominant contention of the learned counsel for the petitioner is that had the Courts below have considered the recitals of Ex.A.1 Settlement Deed the finding recorded by the Rent Controller as fully endorsed by the Rent Control Appellate Court would have been otherwise. It is a settled principle of law that the Court has to take into

consideration intrinsic meaning of the recitals of the document in toto in order to ascertain the nature of the document, but it cannot be carried away by the nomenclature of the document. It is not out of place to extract hereunder the relevant portion of Ex.A.1 in order to ascertain the nature of document.

ఈక్రింద ఉదహరించిన ఆశయములగా భిన్నము లేకుండా శాశ్వతముగా ఉపయోగపడవలసిన సదుద్దేశ్యముతో ది గుంటూరు పట్టణ విశ్వబ్రాహ్మణ సంఘం (రిజిస్టర్ నెం.82/71) తరపున ప్రస్తుత అద్యక్షులు అయిన దార్ల వెంకటేశ్వర రావు గార్లున్న, మరియు ప్రస్తుత ప్రధాన కార్యదర్శి అయిన చందమోలు ఫనిభూషణ చార్యులు గార్లుకున్నాదిగువ షెడ్యూల్ దాఖలా రూ 1,12,500/- (ఒక లక్ష పంద్రెండు వేల అయిదు వందల రూపాయలు) కిమ్మితు గల స్థిరాస్థులను సమర్పించి ప్రతిఫల రహితముగా సెట్టిపర్చి ఈ దస్తావేజు పూర్వకముగా హక్కు కలుగజేసి స్వాధీనపరచడమైనది.

18 The recitals of Ex.A.1 clearly go to show that it is a gift deed executed in favour of the petitioner-Sangham. Suffice it to say that gift deed is an attestable document. A fascicular reading of Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act clearly demonstrates that in order to prove the recitals of a gift deed at least one of the attestors shall be examined. Admittedly, neither the executant nor one of the attestors of Ex.A.1 was examined to prove the recitals of the same. It is needless to say that mere marking of a document *per se* would not amount proof of recitals of the document. In order to prove the recitals of the document, one of the parties to the document shall be examined. Mere examination of one of the parties to the document by itself is not sufficient to place reliance on a document to consider the recitals of it unless such document is relevant to resolve the lis involved and added to that the document has probative value. For one reason or the other, the petitioner has not taken steps to prove the recitals of Ex.A.1 – Settlement deed. In this factual scenario non-placing of reliance on Ex.A.1 by the courts below, basing on sound principles of law, cannot be found fault with since deciding of legality or otherwise of Ex.A.1 falls outside the purview of the jurisdiction of the Rent Controller. Viewed from any angle, I am

unable to accede to the contention of the learned counsel for the petitioner that the courts below committed grave error for not attaching much credence and credibility to Ex.A.1.

19 As seen from the testimony of R.W.2, the petitioner submitted Ex.X.1 to the electricity department to transfer the electricity service connection which stands in the name of Ramakoteswara Rao to it. It is not out of place to extract the relevant portion of the same hereunder:

“Whereas the executant is the President of Guntur Town Viswa Brahmana Society, having purchased the same from P. Ramakoteswara Rao under a registered sale deed and the service connection is originally in the name of Sri Dharla Venkateswara Rao.”

20 A perusal of recitals of Ex.X.1 at a glance gives an impression to any ordinary prudent man that the petitioner has purchased the property in question from late Ramakoteswara Rao. Suffice it to say that the defendant can take any number of inconsistent pleas, but not entitled to take mutually self destructive pleas. In the instant case, the petitioner itself has taken mutually self destructive pleas, which is not permissible under law. The recitals of Ex.X.1 also negate the stand of the petitioner that it got the property under Ex.A.1 settlement deed.

21 The learned counsel for the petitioner advanced alternative argument that Sesharatnamma got the property as agnate of late Ramakoteswara Rao even if the court discards Ex.A.1 settlement deed. Even as per the version put forth by the petitioner, Sriramulu and Parabrahmacharyulu were given in adoption to two different families. As per the provisions of the Hindu Adoption and Maintenance Act, the effect of adoption is transplantation of an individual from one family to another family i.e. from the family of natural parents to the family of adopted parents. The moment the adoption takes place, the adopted son cannot claim any right from the family of his natural parents. Therefore, the theory of succeeding of the property by

Sriramulu after the death of Ramakoteswara Rao is not acceptable. The learned counsel for the petitioner advanced an argument that even otherwise Sesharathnamma succeeded the property as Class II heir of late Ramakoteswara Rao. There is no pleading either in the plaint or in the grounds of appeal to that effect. In the absence of family pedigree it is not possible to arrive at a conclusion whether Sesharathnamma or her husband Sriramulu succeeded the property Rao as agnate or cognate of late Ramakoteswara. Any amount of oral or documentary evidence without proper pleading is of no avail. By any stretch of imagination, it cannot be presumed that Sesharathnamma succeeded the property as Class II heir of late Ramakoteswara Rao basing on the facts pleaded and proved. The specific stand of the petitioner is that Sriramulu got the property after the death of Ramakoteswara Rao and thereafter Sesharathnamma. Reversionary rights as postulated under section 14 of the Hindu Succession Act is entirely different to that of succeeding of the property as Class II heirs. In view of the foregoing discussion, I am unable to accede to the contention of the learned counsel for the petitioner that Sesharathnamma or Sriramulu succeeded the petition schedule property as Class II heirs.

22 Establishment of landlord and tenant relationship is *sine qua non* to entertain the application under section 10 of the Rent Control Act. Before entertaining the petitions, the Rent Controller has to satisfy himself that there is a *prima facie* jural relationship of landlord and tenant. If the Rent Controller comes to a conclusion that there is no jural relationship of landlord and tenant between the petitioner and the respondent, the petition is liable to be dismissed in limine. The material placed before the Court clinchingly establishes that the Rent Control Court lacks inherent jurisdiction to entertain the Rent Control Petition for want of jural relationship of landlord and tenant between the

petitioner and the respondent. Moreover, the petitioner has taken a specific plea in the petition that after the death of Ramakoteswara Rao, the tenants paid the rent to the petitioner – Sangham. If the petitioner establishes that the respondent paid rent to it after the death of Ramakoteswara Rao, certainly it amounts to attornment of petitioner as landlord. If this particular aspect is established, then the Rent Controller has got jurisdiction to entertain the petition. The burden of proof lies on the petitioner to establish that the respondent paid the rents to the petitioner Sangham recognizing it as landlord. The petitioner did not produce even a single scrap of paper to substantiate that the respondent paid rent to the petitioner Sangham by recognizing it as landlord. Viewed from this angle also, the stand taken by the petitioner has no legs to stand. The respondent denied the title of the petitioner bonafidely.

23 Both the Courts below have considered the oral and documentary evidence in right perspective and arrived at a conclusion that there is no jural relationship between the petitioner and the respondent. The findings recorded by the Courts below are supported by legally admissible evidence. There are no grounds much less valid grounds to upset the findings recorded by the courts below. There is no illegality or irregularity in the orders passed by the Courts below warranting interference from this Court under Section 22 of the Rent Control Act. I am fully agreeing with the findings recorded by both the courts below. The revision petition lacs merits and bonafides.

24 Accordingly, this Civil Revision Petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Civil Revision petition shall stand closed.

T. SUNIL CHOWDARY, J

Date: 6th August, 2015
Kvsn

[\[1\]](#) 1999 AIHC 4313