

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

CIVIL REVISION PETITION No.4201 of 2012

ORDER:

This Revision is filed challenging the order dt.03-07-2012 in R.C.A.No.2 of 2010 of the Senior Civil Judge-cum-Appellate Court of Rent Control Cases at Visakhapatnam confirming the order dt.17-03-2010 in R.C.C.No.2 of 2003 of the Rent Controller-cum-IV Additional Junior Civil Judge at Visakhapatnam.

2. The petitioners are tenants of respondent in respect of the R.C.C. schedule premises, which is a residential house in Visakhapatnam.
3. The respondent filed R.C.C.No.2 of 2003 against petitioners stating that the R.C.C. schedule premises is his ancestral property, which devolved on him in a family partition, that his father has leased it out to one Kanchayya, father of respondent Nos.2 and 3 and after the death of the father of respondent Nos.2 and 3, their elder brother Apparao had become the tenant of the R.C.C. schedule premises. He contended that Apparao had executed a lease letter dt.05-05-1991 in favour of respondent agreeing to pay monthly rent was Rs.250/-, that he was issuing receipts to the said Apparao whenever he paid rents and the said Apparao as well as 2nd petitioner were working as Process Servers in the District Court, Visakhapatnam. He alleged that 2nd petitioner and Apparao threatened to murder him if he approaches them for rent and he lodged a complaint to the District Judge, Visakhapatnam on

03-03-1980 against them. He stated that Apparao then requested him not to prosecute the said complaint since it would endanger his job. So the respondent did not prosecute the said complaint. He alleged that Apparao had committed willful default in payment of rent in 1996, that he issued Ex.A-5 legal notice to Apparao who received the same and issued a reply notice with false allegations. He alleged that Apparao had paid monthly rents from 01-05-1996 to 31-10-1996 at one and the same time; thereafter Apparao agreed that he will pay rents without any default; he agreed to enhance the monthly rent from Rs.600/- to Rs.800/- and paid them from 01-11-1996 to 28-08-1997 under receipt dt.01-11-1996; that he also paid rent from May, 2000 to July, 2000 under receipt dt.02-08-2000, but thereafter he did not pay the monthly rent. He therefore contended that since Apparao had committed willful default in payment of rents from August, 2000, and since he died in September or October, 2000, the 1st petitioner, who is the wife and petitioner Nos.2 and 3, who are Apparao's brothers and who are continuing in R.C.C. schedule property as tenants, are liable to be evicted. He also stated that he issued Ex.A-9 legal notice

dt.15-02-2002 to petitioners asking them to vacate the premises but they did not do so. An additional ground was also raised by respondent that he required the R.C.C. schedule property as additional accommodation because members of his family were increasing and he required the R.C.C. schedule property for his *bona fide* personal occupation.

4. The 1st petitioner is no other than the wife of Apparao and on her death, 4th petitioner had been impleaded in the R.C.C.

5. The petitioners filed a counter stating that the entire R.C.C. schedule property belongs to Pithani people and was popularly called as Pithani Dibba. According to petitioners, one Mr.Messik, a teacher in St.Anthony School, had leased out 200 sq. yds. to the father-in-law of petitioner Nos.2 and 3 by name Appalaswamy in 1955 on a monthly rent of Rs.10/-. They contended that the rent was enhanced from time to time by Mr.Messik and Appalaswamy used to pay the same. According to them, in 1964 there was a fire accident in the locality, around 500 houses were gutted by the fire, and the Government provided A.C. sheets to all the persons in the locality, laid Municipality Tar roads and developed the area. They contended that Appalaswamy constructed a A.C. sheet roofed shed and he died in 1965 leaving behind petitioner Nos.2 and 3, their brother Apparao and his wife; that the elder brother of respondent by name Surya Bhagavan approached the husband of 1st petitioner by claiming to be the absolute owner of the property and demanded payment of rents and that Apparao, who was not aware of the real situation, under threat, made payment of rents to the said Surya Bhagvan. They also pleaded that the respondent later claimed that there was a family arrangement pursuant to which he is entitled to rents from Apparao and thereafter the respondent also collected rents for the site. They denied that respondent constructed 3 sheds and leased out the same to petitioners in 1991 and they also denied that Apparao had executed a lease deed in 1991. They categorically denied the existence of relationship of landlord and tenant between respondent and themselves.

6. Before the Rent Controller, the respondent examined P.Ws.1 to

5 and marked Exs.A-1 to A-12. The petitioners examined R.Ws.1 to 4 and marked Exs.B-1 to B-14. C.W.1 was also examined and Exs.C-1 to C-7 were marked.

7. By order dt.17-03-2010, the Rent Controller allowed the R.C.C. He observed that P.W.2 had stated in cross-examination that respondent gave instructions for scribing Ex.A-1 lease deed and by the date of execution of Ex.A-1, the persons who obtained lease were already in occupation of the property. He also relied on the evidence of P.Ws.4 and 5, who are paternal uncle and cousin of respondent, and accepted their evidence that the property in question originally belong to late Kandula Venkata Reddy, that he had 3 sons by name Soma Sundara Rao, Subba Rao and Surya Harnath and that the property fell in family partition to the share of Surya Harnath, the respondent herein. After referring to the evidence of R.W.1 that Apparao, during his lifetime, looked after all the affairs of the R.C.C. schedule property and after him P.W.1 was looking after the affairs of the property, the Rent Controller observed that petitioners did not claim ownership of the R.C.C. schedule property and that although petitioners contended that the brothers of Apparao did not come under the purview of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act") since they were not directly tenants of respondent, in view of the definition of the term "tenant" in the Act, even a member of the tenant's family or a person who was living with the tenant as a member of the tenant's family upto the death of the tenant would become a tenant, and therefore the petitioners come under the purview of the Act as tenants. He held that petitioners could not establish that the land in which they reside belonged to Mr.Messik and

also the claim of respondent that he is not the owner of the property.

8. This was questioned by petitioners in R.C.A.No.2 of 2010 before the Principal Senior Civil Judge-cum-Appellate Court of the Rent Control Cases at Visakhapatnam. The lower appellate Court also confirmed the findings of the Rent Controller.
9. The lower appellate Court referred to Ex.A-2, a report given to the then District Judge, Visakhapatnam by respondent that Apparao was the tenant of the R.C.C. schedule property from 01-01-1979 for 11 months on a monthly rent of Rs.40/- and after expiry of lease, when respondent went to effect repairs to the building, Apparao and his brothers threatened him with dire consequences. It also referred to Ex.A-7 (reply notice to Ex.A-5 legal notice) got issued by Apparao wherein Apparao stated that the R.C.C. schedule property originally belonged to respondent's father Venkata Reddy, who used to collect ground rent of Rs.10/- , that subsequently ground rent was enhanced from time to time, and that Surya Bhagvan, the elder brother of respondent used to come and collect the rent from him. From this, the lower appellate Court concluded that respondent's family had title to the property and they had been collecting rent from Apparao and his brother and by the date of Ex.A-7 the rent was Rs.350/- p.m. It held that the evidence of P.W.2 also corroborates the fact that Apparao had signed on the lease deed Ex.A-1 in his presence to establish the relationship of landlord and tenants. It referred to the evidence of P.W.3 and C.W.1, the Advocate-Commissioner, who both deposed that the R.C.C. schedule property is private property and concluded that it was not the Government property as contended by petitioners. It held that once it is admitted by

Apparao that he is a tenant of respondent in Ex.A-7, the denial of title by petitioners is not *bona fide* but it is *mala fide*. It also held that there is willful default in payment of rent by petitioners to respondent.

10. Challenging the same, this Revision is filed.
11. Heard Smt.N (P) Anjana Devi, learned counsel for petitioners and Sri V.Sudhakar Reddy, learned counsel for respondent.
12. Learned counsel for petitioners primarily contended that both the Rent Controller and the Appellate authority under the Act erred in holding that denial of title by petitioners is not *bona fide* and reiterated that there is no relationship of landlord and tenant between petitioners and respondent. She contended that both the Rent Controller as well as Appellate authority have not properly considered the evidence on record and the findings given by them cannot be sustained.
13. Learned counsel for respondent, on the other hand, refuted the above contentions and supported the orders passed by the Rent Controller and lower appellate Authority under the Act.
14. I have noted the submissions of both sides.
15. While the respondent contended that he is the owner of the property and that petitioners are his tenants, the petitioners have denied the title of respondent and also denied that there is relationship of landlord and tenant between them and the respondent.
16. The case of the respondent is that his father leased out the property to Kanchayya, father of petitioner Nos.2 and 3 long

back; subsequent to the death of the father of petitioner Nos.2 and 3, Apparao, brother of Kanchaiah and father of 4th petitioner, became the tenant of the R.C.C. schedule property and he has executed Ex.A-1 lease letter

dt.05-05-1991 in his favour. He relied on Ex.A-5 legal notice dt.30-05-1996 got issued by him to Apparao and the reply Ex.A-7 dt.10-06-1996 of the said Apparao to him. The said Ex.A-7 contains an admission by Apparao about collection of rent by respondent and there is also statement to the effect therein that the rent at the time of Ex.A-7 dt.10-06-1996 was Rs.350/- p.m.

17. Ex.A-1 is an unregistered lease deed dt.05-05-1991 executed by Apparao in favour of respondent mentioning that the rent is Rs.350/- p.m. P.W.2 had deposed that respondent had given instructions for scribing Ex.A-1 and Ex.A-1 was scribed in his presence. The ownership of respondent is also corroborated by the evidence of P.Ws.4 and 5, who are paternal uncle and cousin of respondent, who both deposed that in a family partition the schedule property fell to the share of respondent. From this it is clear that Apparao was tenant of the RCC schedule property.
18. Admittedly, the petitioners have not claimed ownership of the R.C.C. schedule property. They have also failed to establish that Mr.Messik, teacher in St.Anthony High School had granted lease to them of the vacant site where the R.C.C. schedule property is located. No scrap of paper has been filed to prove even *prima facie* that Mr.Messik was the owner of the property.
19. Although the learned counsel for petitioners sought to highlight a statement in the cross-examination of respondent that R.C.C.

schedule property has a municipal No.12-1-9, when in fact in the R.C.C. schedule its number is mentioned as D.No.12-1-10/1, in the chief-examination, the door number has been correctly mentioned by respondent. Also in Ex.A-5 legal notice issued by respondent, the door number had been correctly mentioned as D.NO.12-1-10. So the petitioners cannot be allowed to take advantage of the slip of tongue by respondent and contend that the property in their occupation is different from the property belonging to respondent.

20. Also, the 2nd petitioner, who was examined as R.W.1, stated that he and his brothers are residing in the R.C.C. schedule property along with their families in 3 different portions, and he admitted in cross-examination that his elder brother Apparao during his lifetime looked after all the affairs of the houses. From this, it is clear that the petitioners are members of the family of Apparao and Apparao was the tenant of the R.C.C. schedule property.

21. Section 2(ix) of the Act states :

“(ix) ‘Tenant’ means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son or daughter, of a deceased tenant who had been living with the tenant in the building as a member of tenant’s family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building, by its tenant or a person to whom the collection of rents or fees in a public market, cart-stand or slaughter-house or of rents for shops has been farmed out or leased by a local authority.”.

22. From the said definition it is clear that not only the person on whose account rent is payable for the building but also his family members who are staying along with him in the R.C.C. schedule property would fall within the category of the term “tenant”.

23. The evidence of P.Ws.1 to 4 and Exs.A-5 and A-7 when considered together categorically establish the prima-facie title of respondent to the R.C.C. schedule property and the fact that Apparao, husband of 1st petitioner and father of 4th petitioner was the tenant of the R.C.C. schedule premises. Admittedly the 1st petitioner who is the wife of Apparao, 4th petitioner his son and petitioner Nos.2 and 3, brothers of Apparao were also staying with Apparao. Once Apparao in Ex.A-7 admitted that he was paying rent @ Rs.350/- p.m. by 1996 to respondent, by virtue of definition of term "tenant" in Section 2(ix) of the Act, the petitioners also become the tenants of the respondent.
24. Since no material is placed on record by them to show that Mr.Messik had leased out a vacant site to them and they obtained a lease from Mr.Messik, their denial of title of respondent cannot be held to be *bona fide*.
25. Admittedly, the petitioners have not paid rents to respondent for the period after October, 2000 till filing of the R.C.C. in the year 2003. Therefore they have also committed willful default in payment of rents. Therefore on both the above grounds, the petitioners are liable to be evicted under the Act.
26. In view of the above discussion, I do not find any irregularity or infirmity in the findings of the Rent Controller and the lower appellate Court. Therefore the finding of both the Rent Controller and the appellate authority that the denial of title by petitioners is not *bona fide* and they are liable to be evicted on the said ground, cannot be said to incorrect or perverse.
27. Accordingly the Civil Revision Petition is dismissed. The

petitioners are granted time till 15-01-2016 to vacate the R.C.C. schedule property subject to the petitioners filing an undertaking before the Rent Controller within one week from the date of receipt of a copy of this order that they would vacate the R.C.C. schedule premises by the said date and also subject to the petitioners depositing the arrears of rent from October, 2000 till date within a period of four (04) weeks from the date of receipt of a copy of this order. In default of complying with either of these conditions, the petitioners will be liable to be forthwith evicted from the R.C.C. schedule premises. The amounts, if any deposited by petitioners pursuant to the above direction, are permitted to be withdrawn by respondent without furnishing any security. No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 14-10-2015

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