

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.No.200 of 2015

Between:

Shankarlal Loya

.....Petitioner

and

1. Ramdev Rathi (died)

2. Usha Devi Rathi and others

.....Respondent

Date of Judgment pronounced : 05-08-2015

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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

C.R.P.No.200 of 2015

ORDER:

Heard Sri Nazir Ahmed Khan, learned counsel for the petitioner and Sri EVVS Ravikumar, learned counsel for the respondents.

2. This Revision Petition is filed challenging the Order dt.03-11-2014 in R.A.No.75 of 2011 of the Chief Judge, City Small Causes Court, Hyderabad confirming the Order dt.31-12-2010 in R.C.No.308 of 2005 of the II Additional Rent Controller, City Small Causes Court, Hyderabad.

3. Petitioner herein is a tenant and 1st respondent is the *karta* of HUF by name Mohanlal Shankerlal Rathi. The petitioner's tenancy commenced on 01-09-1990. Alleging that the petitioner failed to pay rents from July 2004 to October 2005, a legal notice dt.09-05-2005 was issued to the petitioner by 1st respondent terminating the tenancy and asking him to vacate the premises by the end of June 2005.

4. Pending the Rent Control Case, the respondent Nos.2 to 6 executed a registered gift deed dt.16-01-2008 in favour of 7th respondent in respect of R.C. schedule property which is in the possession of the petitioner.

5. The 7th respondent thereafter got impleaded as a petitioner in the R.C.C. on 10-06-2010 and reiterated that the petitioner committed willful default in payment of

rents even subsequent to the gift deed in favour of respondent No.7 and that he committed default in payment of rents from February 2008 to December 2009.

6. In the counter filed by the petitioner in the R.C.C., the petitioner denied that 1st respondent was the *kartha* of the HUF but admitted that he is the tenant of the property and that he had obtained the mulgi for rent from 1st petitioner and running kirana and general stores. He alleged that when he approached 1st respondent for payment of rents, 1st respondent refused to receive it in August 2004 and insisted that the rent be enhanced to Rs.2,500/- per month. He denied that he committed default in payment of rent from July 2004 to October 2005. He also contended that 1st respondent failed to issue monthly rental receipts even after collection of rents from him and he is ready and willing to deposit rents before the Rent Controller. He alleged that he paid the rents up to the date but 1st respondent did not issue any receipt. He also contended that 7th respondent informed him that respondent Nos.2 to 6 had executed registered gift deed in his favour on 16-01-2008 and demanded him to pay rent, but respondent Nos.2 to 6 had not informed this fact to him in writing. He claimed that he sent rents for September 2008 by money order to 7th respondent and once again sent the rents for the months of September

and October 2008 on 24-10-2008 by money orders but the same was got returned by 7th respondent in collusion with the postal authorities stating that the payee was absent. He also claimed that he had addressed a legal notice to 7th respondent on 25-02-2009 and furnished the bank account number and the said notice was refused by 7th respondent. He also stated that the Pay Orders were taken on 22-03-2010 for Rs.26,200/- and Rs.25000/- representing the rents from September 2008 to April 2010 and the same were sent to the address of 7th respondent's counsel on 14-03-2010. He also contended that 7th respondent has no cause of action once he obtained the R.C. schedule property by way of gift deed to continue the R.C.

7. Before the Rent Controller, the respondent examined P.Ws.1 and 2 and marked Exs.P-1 to P-16. The petitioner examined R.Ws.1 and 2 and marked Exs.R-1 to R-79.

8. By judgment dt.31-12-2010, the Rent Controller allowed the R.C. and directed eviction of the petitioner. It held that existence of jural relationship of landlord and tenant between the petitioner and 1st respondent was not in dispute. It held that even if the advance of Rs.4,800/- given by the petitioner to 1st respondent was adjusted, an amount of Rs.36,160/- was

due as arrears of rent for the period July 2004 to October 2005. It further held that in the counter filed by the petitioner, he himself admitted that he did not pay rent from July 2004 and that on 05-11-2005, the petitioner enquired about the request for paying Rs.3,000/- per month. It held that Exs.R-1 to R-19 filed by the petitioner did not cover the default period and were irrelevant; I.A.No.408 of 2005 was allowed on 13-03-2006 directing the petitioner to deposit the rents from July 2004 to October 2005 but this order also was not complied with by the petitioner; and therefore, the petitioner can be said to have committed willful default in payment of rent for the period from July 2004 to April 2005 to respondent Nos.1 to 6. It also held that 7th respondent was able to establish that the petitioner had committed default in payment of rent from February 2008 to September 2009 and that a petition for eviction on the ground of default in payment of rent can be continued even if there is an alienation after filing of the eviction petition. It held that subsequent purchaser has also right to file eviction petition against tenant who committed default in payment of rent prior to the sale even though there is no assignment of right in his favour to recover arrears. It placed reliance on the judgments of this Court in **E.Vijayachandra Reddy Vs.**

Dr. Prasad and others^[1], Voona Rama Rao

Vs. Sri Tankala Raghunatham and Another^[2] and

Shankaramma and others Vs. Mohammed Abdul

Hameed and another^[3]. It thus rejected the contention of the petitioner that 7th respondent, having obtained the property by way of gift, cannot continue the R.C.C. on the basis that petitioner he committed willful default in payment of rents payable to respondent Nos.2 to 6. It also held that the petitioner failed to prove that he tendered or paid rent from January 2008 to August 2008 through pay order No.169310 dt.21-08-2008 drawn on Oriental Bank of Commerce, Mehdiapatnam, Hyderabad (Ex.P-16) since the petitioner stated in his evidence that although he sent the pay order, he did not remember the date and month when he sent it and he had not filed any evidence to show that it was received by 7th respondent.

9. Challenging the same, the Rent Appeal No.75 of 2011 was filed by the petitioner before the Chief Judge, City Small Causes Court, Hyderabad. By Order dt.03-11-2014 the said appeal was dismissed.

10. The appellate Court confirmed the findings of the trial Court. It held that 7th respondent, by virtue of the gift settlement deed dt.16-01-2008, has got himself impleaded as a party in the rent control proceedings and after his application for impleadment was allowed, he filed an application alleging default in payment of rent subsequent to the gift in his favour executed by the legal

heirs of 1st respondent. It held that by virtue of the transfer of the R.C.C. schedule property under the gift deed, 7th respondent gets all rights in the property and he is entitled to collect rents as a matter of right and the petitioner cannot dispute his right to maintain the eviction case. It held that once there is allegation of default of rent against a tenant, it is the duty of the tenant to establish that he has not committed default in payment of rents as alleged by the landlord. It held that no proof was produced by the petitioner regarding payment of rents by him from July 2004 onwards and he himself admitted in his evidence that last time he paid rent to 1st respondent in June 2004. It held that bank statement produced by the petitioner related to payment of rents for a mulgi which is not the R.C.C. schedule mulgi. It held that in I.A.No.408 of 2005, the petitioner was directed to deposit future rents but the ledger extract Ex.P-11 indicates that rents were not deposited to the credit of the R.C.C. for the period February 2008 to September 2009. It held that under Ex.P-15, 7th respondent asked the petitioner to deposit rents in R.C.No.308 of 2005 and even after filing of such memo by 7th respondent, R.C.No.388 of 2009 was filed by the petitioner under Section 8 (5) of the Act seeking permission for depositing rents into Court; that it was dismissed by the I Additional Rent Controller, Hyderabad; that the rents in respect of R.C. schedule property were

not tendered to 7th respondent personally, and this was admitted by the petitioner in his cross examination. It further held that money order receipts Exs.R-38 to 41, which were sent on 07-03-2009 to 7th respondent by the petitioner, did not indicate for what purpose the amount therein was sent and no particulars of the period for which rents were sent were mentioned therein. It held that even though pay order dt.21-08-2008 was sent by the petitioner representing the rents for the period from January 2008 to August 2008, the same was not sent promptly. It also held that Ex.R-57, legal notice dt.22-03-2010 wherein rents from September 2008 to April 2010 were tendered through two pay orders covered only rents of part of the default period i.e. rents from February 2008 to September 2009 and rents of the subsequent year up to April 2010 were tendered after expiry of one year from the default period commencing from February 2008 to September 2009. It therefore confirmed the finding of the trial Court that there was willful default in payment of rents by the petitioner.

11. Challenging the same, this Revision Petition is filed.

12. Learned counsel for the petitioner contended that since 7th respondent has obtained R.C. schedule property through a gift pending R.C.C., the R.C.C ought to have been dismissed by the Court below

and should not have been entertained.

13. Learned counsel for the respondent on the other hand refuted the said contentions and relied upon the decision of this Court in **Shankaramma** (3 supra).

14. In the said decision, this Court held that if the transfer of the landlord's right is valid, even if the tenant had not attorned in favour of the transferee, the lease continues and the lessee will not be entitled to the statutory protection under the provisions of the Act, if he commits default in payment of rents. It referred to the definition of the term 'landlord' under Section 2 (vi) of the Act and held that transferee of a landlord is entitled to collect rent as of right and he is a 'landlord' under the inclusive definition. Since attornment is not necessary under Section 109 of the Transfer of Property Act, 1982, the tenant cannot dispute the right of the transferee to maintain a suit for eviction or to claim rent. It held that transferee of the landlord's right, steps into the shoes of the transferor- landlord, with all the rights and liabilities in respect of the subsisting tenancy. It held that the attornment automatically follows the transfer of the property on the same terms and conditions and the transferee is deemed to enter into lease agreement with tenant unless there is contract to the contrary.

15. In view of this decision of the Division Bench of this Court which is binding on this Court, the contention

of the learned counsel for the petitioner that 7th respondent could not have been allowed to maintain R.C.C. or continue it since he had obtained title to the R.C.C. schedule property after the R.C.C. was filed by 1st respondent, cannot be accepted.

16. Also the concurrent findings of fact of both the Courts regarding default have been rendered on appreciation of evidence and no material is placed before this Court to take a different view.

17. Therefore, I do not find any merit in the Revision Petition and it is accordingly dismissed. The petitioner is however granted time up to 5th November 2015 to vacate the R.C.C. schedule properties subject to the condition that the petitioner files a Written Undertaking within two weeks from the date of receipt of copy of this order before Rent Controller that he would vacate the R.C.C. schedule property and handover vacant possession thereof to 7th respondent and also subject to the petitioner deposits of arrears of rent to the credit of the R.C.C. within four weeks from today. The rents for the period up to 5th November 2015 also shall be deposited to the credit of the R.C.No.308 of 2005 by the petitioner on or before 5th of each succeeding month. In default of complying with any of these conditions, 7th respondent shall be entitled to apply to the Rent Controller for

immediate eviction of the petitioner. The 7th respondent is also permitted to withdraw the arrears of rents and all rents deposited by the petitioner without furnishing any security. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-08-2015

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[\[1\]](#) 2007 (6) ALT 339

[\[2\]](#) 2007 (6) ALT 814

[\[3\]](#) 2006 (1) ALT 103 (D.B.)