

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4341 of 2015

ORDER:

The petitioners by names Nageswaram Chowdappa and Nageshwaram Moodava Chowdappa, who are the sons of Chowdappa @ Bojjanna, being the 3rd parties to the R.C.C.No.5 of 2010 on the file of the learned Principal Junior Civil Judge/Rent Controller, Proddutur, between the 1st respondent by name Nageshwaram Chowdappa S/o Nadipi Chowdappa-D.Hr. and 2nd respondent-J.Dr. by name Smt. Sarala in making a third party claim over the property under execution in E.A.No.323 of 2013, impugning the legality and correctness of the order, dated 27.07.2015 in the claim petition supra, preferred the present revision.

2. The averments in the grounds of revision are that the decision of the trial Court dismissing E.A.No.323 of 2013 filed by the revision petitioners seeking to disallow the execution of the order, dated 05.01.2013 passed in R.C.C.No.5 of 2010 (H.R.C.No.5 of 2010) by dismissing the E.P.No.100 of 2013 with costs, is illegal, contrary to law and weight of evidence, that the trial Court ought to have seen that it is the plea and contentions of the petitioners in the claim petition that the petition scheduled property, though originally purchased jointly by the petitioners along with the petitioner's brother, by name Nageswaram Chinna Chowdappa, through registered sale deed, dated 05.03.1983(Ex.A.2) and the same was gifted away by the petitioners under a registered gift deed, dated 24.02.1989(Ex.A.3) in favour of the said Nageswaram Chinna Chowdappa, who died unmarried, intestate on 10.11.2001(Ex.A.4), the petitioners became Class-II legal heirs to succeed to the estate of the said deceased brother as the parents are pre-deceased, therefore, the petitioners are absolute owners and exclusive possessors of the petition scheduled property, entitled to seek the relief as

prayed for, that the 1st respondent by name Nageswaram Chowdappa S/o Nadipi Chowdappa, who pretends to be the owner of the said property, has no right or title over the said property and therefore, the claim petition filed by the petitioners to disallow the execution of the orders passed in the R.C.C.No.5 of 2010 filed by the 1st respondent herein against the 2nd respondent behind the back of the petitioners without looking into the same properly, dismissing the application is unjust and unsustainable in law, that the trial Court ought to have seen that there is no relationship of landlord and tenant between the respondents herein and in view of that R.C.C.No.5 of 2010 filed against the 2nd respondent by the 1st respondent herein for eviction from the petition scheduled property on the ground of willful default is neither maintainable in law nor the 1st respondent can seek execution of the decree passed in the said proceedings, that the trial Court ought to have seen that the names of the petitioners and another deceased brother are not only similar but also a slight difference as Nagaswaram Chowdappa, Nagaswaram Chinna Chowdappa(the deceased) and Nageswaram Moodava Chwodappa and the property stood in the name of the deceased brother, that taking advantage of the same the claim of the 1st respondent as if he is Nagaswaram Chinna Chowdappa and the admission of respondent No.1 that he is not the son of Nageswaram Chowdappa @ Bojjanna, but fostered by the said Bojjanna like Nageswaram Chinna Chowdappa is not proved in the enquiry, but believing the same, dismissing the claim petition of the petitioners is unjust, that the trial Court failed to see that it is the evidence of the 1st respondent as R.W.1 in the enquiry that he is not the son of Bojjanna, but son of Nagaswaram Nadipi Chowdappa, which according to that evidence the 1st respondent even cannot claim the property belongs to him, much less seeking eviction and execution thereof, that the trial Court erred in observing that this is only a summary enquiry, cannot give any

finding on the right, title and relationship of the parties and that the petitioners are not entitled to seek to disallow the execution of the order passed in R.C.C., that the trial Court erred in coming to conclusion with regard to the knowledge about the filing of the R.C.C.s. by the 1st respondent as the same cannot prevent the petitioners to file present application, that the trial Court ought to have seen that the demand tax receipts and electricity bills (Ex.A.6 to A.13) produced by the petitioners clearly prove that the property belongs to the petitioners, that the trial Court ought to have allowed the claim petition as the contentions of the petitioners are proved by adducing oral and documentary evidence (Ex.A.1 to A.13) and without looking onto the same properly, dismissing the claim petition is unjust. Hence to set aside the order and decree dated 27.07.2015 in E.A.No.323 of 2013 in E.P.No.100 of 2013 in R.C.C.No.5 of 2010.

3. Heard and perused the material on record.

4. The factual matrix of the case as per the claim petition E.A.No.323 of 2013 filed under Rule 23(7) of the A.P. Buildings (Lease, Rent and Eviction Control) Rules, 1961 in E.P.No.100 of 2013 by the revision petitioners before the Rent Control Court opposing the execution in E.P.No.100 of 2013 pursuant to the eviction order, is that the 2nd floor of the house bearing D.No.5/1867/petition schedule house, of Venkateswara Kottala Street, Proddutur, originally belongs to one Kaipu Meenamma w/o Kaipu Arogya Swamy, that was purchased by said Meenamma from Kamisetty Subbarayudu under registered sale deed No.3895/1980, dated 19.09.1980 and said Meenamma in turn sold to the revision petitioners and their brother Nageshwaram Chinna Chowdappa under registered sale deed No.890/1983 dated 05.03.1983 for consideration and delivered possession and since then all the three brothers including the two claimants were in joint possession and enjoyment during which they removed the old and dilapidated hut and jointly gifted away the same as vacant site on 24.02.1989 under

registered gift deed No.802 to their brother Nageshwaram Chinna Chowdappa, and while Nageshwaram Chinna Chowdappa was thereafter in exclusive possession and enjoyment, constructed a zink sheeted room and he died possessing the same intestate on 10.11.2001 and consequently the claim petitioners, being his brothers as sole legal heirs, succeeded to the same and constructed a pacca house with ground floor, 1st floor and 2nd floor and the same is even assessed to property tax by Proddutur Municipality, that their father Nageshwaram Chowdappa @ Bojjanna died intestate earlier on 29.12.1999 leaving behind three sons and wife Gangamma (mother of the claimants), said Gangamma also died intestate in the year 2000 leaving behind her the three sons and subsequently Nageshwaram Chinna Chowdappa as referred supra died on 10.11.2001, they leased out the ground floor to one Pathan Jaffar Ali Khan in May, 2007 and 1st floor to one Kota Venkata Subramanyam in June, 2007 and the petition schedule house to the 2nd respondent-J.Dr. Smt. Sarala in March, 2009, originally on rent of Rs.5,000/- p.m. later enhanced to Rs.1,000/- per month and all the tenants of the three floors are paying rent regularly to the claimants and while so, the 2nd respondent-J.Dr. herein vacated and delivered vacant possession of the claim petition premises on 01.06.2012 and the same is since then vacant. It is further averred that they came to know of the 1st respondent-D.Hr. filed above R.C.C.No.5 of 2010 against the 2nd respondent-J.Dr. which is a collusive outcome as if he is owner and she is a tenant under him and obtained *ex parte* order behind back of the claimants and by misleading the Rent Control Court and pursuant to the *ex parte* decree filed execution application vide E.P.No.100 of 2013 which is also a collusive outcome and 2nd respondent, tenant under the claimants earlier and vacated, not even informed the pendency of the R.C.C.No.5 of 2010 that was initiated with *mala fide* intention by the 1st respondent behind the back of the claimants to knock the property if

possible though there is no any landlord-tenant relation between them and the 2nd respondent never a tenant under the 1st respondent but for with nefarious to usurp the possession of the petition schedule premises in making the claim opposing the execution.

5. The 1st respondent/D.Hr. supra filed a counter in the claim petition by denying specifically of the claim petition averments supra with the contentions that it is the 1st respondent-petitioner in R.C.C.No.5 of 2010 is the owner of the petition schedule premises which he got under registered gift deed No.802/89 dated 24.02.1989 that was executed by the petitioners that was accepted and taken possession by the 1st respondent and it is he that constructed the house with approved plan of Proddutur Municipality with his savings and by obtaining loan from L.I.C. by depositing the original gift deed with L.I.C. as security for the house loan advanced and he cleared the loan and taken back the original documents being employee of the L.I.C. by salary deduction from his monthly earnings and even the gift deed clearly shows the recital of his name of being to mean by L.I.C. employee Nageshwaram Chowdappa which is the identity of him and no others and he filed the R.C.C. case on 14.05.2010 against the three tenants Shaik Jaffar Ali Khan, Kota Subramanyam and Smt. Sarala for eviction and despite contest by Shaik Jaffar Ali Khan in R.C.C.No.1 of 2010 was allowed and by execution of the same he has taken possession of the premises through police aid and so far as the 1st floor premises in the lease of Kota Subramanyam, there was lok adalath settlement of the R.C.C. No.4 of 2010, before the Lok Adalath on 03.02.2010 and he has been paying rents regularly and the 2nd respondent tenant of the present premises under the 1st respondent of monthly rent of Rs.1,000/- since was not paying the rents regularly despite demands by opposing the 1st respondent/D.Hr. and his wife, he caused issue a registered notice dated 09.02.2010 and the 2nd respondent did not even choose to reply which made him to file R.C.C.No.5 of 2010 against

the 2nd respondent that was ultimately decreed on 05.01.2013 and he filed E.P.No.100 of 2013 to evict her and to take possession pursuant to the decree in R.C.C.No.5 of 2010. It is therefrom contended that the claim petitioners have no right or title or possession over the property and their claim is false and the death certificate of Nageshwaram Chowdappa has been created by them in collusion with the 2nd respondent herein in making the claim to knock away the petition schedule property of the 1st respondent and there were exchange of legal notices between the 2nd respondent and the claim petitioners, as he is even working in Life Insurance Corporation and alive they claimed as if he died in filing a fake death certificate and the petitioners cannot resist execution proceedings and the claim petition is unsustainable and it is nothing to drag on the execution proceedings if possible and the claim petitioners are not entitled to any relief and thereby sought for dismissal of the claim. 2nd respondent did not choose to file any counter. It is therefrom the Rent Controller in the claim petition in answering the point as to the claim petitioners are entitled to the claim and to oppose the execution of the decree in R.C.C.No.5 of 2010, from the evidence recorded of P.Ws. 1 to 3 viz; the claimants 1 and 2 and one Kaveti Kondaiah (P.W.3) and Exs.A.1 to A.13 viz; certified copies of registered sale deeds, dated 19.09.1980 and 05.03.1983 in favour of K.Meenamma and in turn in favour of the petitioners and another executed by said Meenamma, and certified copy of registered gift deed No.802, dt. 24.02.1989, death certificate of Nageshwaram Chinna Chowdappa, family member certificate, property tax receipts along with demand notices, water tax demand notices and payment receipts and electricity bills and receipts and on behalf of contesting 1st respondent Nageshwaram Chowdappa(L.I.C.) he himself examined as R.W.1 and placed reliance upon Exs.B.1 to B.17 viz. letter, dated 10.08.2014 issued by Tahasildar, legal notice dated 03.09.2010, original registered sale deed executed by Chimikala Narayana Reddy in favour of K.Meenamma, dated 17.03.1979, original sale deed of even

date executed by Gajjalla Pedda Tirupalu and Kullayamma in favour of K.Meenamma and original registered sale deed, dated 05.03.1983(original of Ex.A.2) executed by K.Meenamma in favour of the 1st respondent along with the petitioners, original gift deed dated 24.02.1989 executed by the petitioners in favour of the 1st respondent, original registered mortgage deed dated 04.10.2010, executed by the 1st respondent in favour of Y.Nagabhushanam and M.Rami Reddy, original registered mortgage discharge deed, dated 11.11.2010 executed by those two persons in favour of the 1st respondent, office copy of reply notice cause issued by the 1st respondent, dated 19.10.2010, original receipt of closers of mortgage loan account and release of property dated 31.08.2010, original approved municipal plan with proceedings of Proddutur Municipality in favour of the 1st respondent, certified copy of the order in H.R.C.No.1 of 2010 of the Rent Controller against Shaik Jaffar Ali Khan, certified copy of the E.P.No.48 of 2012 in the said H.R.C.No.1 of 2010, original electricity bills, municipal tax receipts, salary certificate issued by the L.I.C. of India in favour of the 1st respondent and lok adalath award in R.C.C.No.4 of 2010.

6. With reference to the above evidence oral and documentary, the Rent Controller in deciding the claim petition, observed that the names of the donor of Ex.B.6 gift deed, dated 24.02.1989 relied by the 1st respondent, copy of which marked as Ex.A.3 by the claim petitioners, shows Nageshwaram Chowdappa and Moodava Chowdappa S/o Nageshwaram Chowdappa @ Bojjanna and the name of the donee is Chowdappa, 2nd son of Nageshwaram Chowdappa @ Bojjanna. The petitioners placed reliance on Ex.A.4 death certificate, dated 10.11.2001, of their brother Nageshawram Chinna Chowdappa who died intestate and placed reliance on Ex.A.5 family member certificate which shows that all the three are the sons of Chowdappa @ Bojjanna and Narayanamma is wife of 1st petitioner and Nagalakshamma is wife of 2nd petitioner. The

1st respondent contends that his father Nadipi Chowdappa died during their childhood and their senior paternal uncle i.e. Nageshwaram Chowdappa @ Bojjanna fostered them as such the name of said Bojjanna shown as his father in Exs.A.2 and A.3=B.6 (registered sale deed dated 05.03.1983 and registered gift deed, dated 24.02.1989). The Rent Controller therefrom observed that admittedly Nageshwaram Chinna Chowdappa is not the L.I.C. employee which the claimants claimed as their another brother, however, they claimed said Chinna Chowdappa is L.I.C. agent and mistakenly shown as the L.I.C. employee and to say even acted with L.I.C. as agent but there is not even any piece of evidence they could produce of they got another brother by name Nageshwaram Chinna Chowdappa and he was an L.I.C. agent. Even undisputedly, the 1st respondent is a L.I.C. employee and he claims as he is referred in Ex.B.6=original of Ex.A.3 gift deed. The Rent Controller further observed on the crucial aspects that the 1st respondent filed the original sale deeds and gift deeds covered by the Exs.B.2 to B.6 but the claimants filed only certified copy of Ex.B.6(Ex.A.3) and certified copy of Ex.B.5 (Ex.A.2) and they could not show how the 1st respondent got the original title deeds and gift deed if he is not the donee as claimed and there is no another person by name Chinna Chowdappa s/o Chowdappa @ Bojjanna much less to claim as their brother but for the contest of 1st respondent as employee. It is further discussed that the original approved municipal plan of the house obtained by the 1st respondent for this property covered by the Ex.B.11 and he mortgaged already the properties to Y.Ngabhushanam and Y.Rami Reddy under Ex.B.7 and discharged under Ex.B.8 and later mortgaged with L.I.C. in availing the loan and further it is 1st respondent who filed the three cases viz; R.C.C.No. 1, 4 and 5 of 2010 and the R.C.C.No.5 of 2010 relates to the 2nd respondent-tenant and R.C.C.No.1 of 2010 relates to the tenant one Jaffar Ali Khan, a police constable and after contest eviction order was passed against him

under original of Ex.B.12 and the 1st respondent obtained possession by execution in E.P.No.48 of 2012 under Ex.B.13 and R.C.C.No.4 of 2010 settled in lok adalath under original of Ex.B.17 with one K.Subramanyam. For the claimants even to claim, the three persons as they are tenants, there is no basis and there is no scrap of paper they could file and the evidence on record clearly shows the claim is untenable. The said conclusions arrived by the Rent Controller in dismissing the claim particularly from para-9(vi) shows that the 2nd claimant-P.W.2(2nd revision petitioner herein) admitted in his cross-examination about filing of the three Rent Control Cases(R.C.C.Nos. 1,4 and 5 of 2010) by the 1st respondent against the three persons including 2nd respondent smt. Sarala in R.C.C.No.5 of 2010 and their contest thereby in the claim petition as if they came to know recently is unbelievable and P.W.2 further added that EP schedule property in R.C.C.No.5 of 2010 belongs to them however admitted it is the 1st respondent that filed the RCCs and they did not even file any applications to implead them in those cases and it was also admitted about allowing of R.C.C.No. 1 of 2010 directing the eviction of Shaik Jaffar Ali Khan and the same was executed and recovered possession for Jaffar failed to vacate despite decree for eviction resulting filing E.P.No.48 of 2012 and evicting him by the 1st respondent as D.Hr. through police aid and the admission of P.W.2 as he was also there by that time suffice to say the claim petition is untenable and P.W.2's evidence when compared with that of P.W.1 belies what P.W.1 deposed and their claim is false thereby sufficient to hold there are no *bona fides* in the claim petition and dismissed the same. It is the same now impugned in the present revision.

7. On perusal of the order supra, with reference to the evidence on record, clearly shows the claim is untenable and the learned Trial Judge-cum-Rent Controller, rightly dismissed the same. There is no illegality or impropriety in the order passed by the Rent Controller supported by

reasons for this Court. Furthermore, having regard to the above, for this Court while sitting in revision, there is nothing to interfere from several of contentions raised but for remedy if at all is left open to maintain the efficacious civil suit for declaration of title and possession as observed by the Rent Controller.

8. In the result, the Revision is dismissed. There is no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Revision shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:01.04.2016

Vvr