

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P.No.3798 OF 2016

ORDER :

The plaintiffs in O.S.No.189 of 2010 on the file of XXVII Additional Chief Judge, City Civil Court, Secunderabad are the revision petitioners, impugning the order dated 07.04.2016 in I.A.No.789 of 2015 in O.S.No.189 of 2010.

2. The revision respondents are defendant Nos.1 and 2 of the suit supra. The 2nd revision respondent is no other than the brother of the revision petitioners/plaintiffs. The 1st revision respondent is no other than the tenant for part of the ground floor of commercial building bearing House No.1-1-40/1/1 and 1-1-40/1/1A with built up area of 3277 sq. feet, H.No.1-1-40/1/2 of first floor with built up area of 4183 sq. ft., H.No.1-1-40/1/1B of second floor with built up area of 4115 sq. feet and H.No.1-1-40/1(Old) of fourth floor (sic. 3rd) with built up area of 1653 sq. feet and remaining open terrace on the fourth floor with its appurtenant land, admeasuring 500 sq. yards, situated at Sarojini Devi Road, Secunderabad. The leasehold premises of the 1st defendant consists of ground floor 2722 sq. feet, second floor 3820 sq.feet, 3rd floor 3820 sq. feet with terrace in the fourth floor, out of the said built up area, vide registered Sale Deed dated 15.03.2007 for 15 years w.e.f., 01.04.2007, on a monthly rent of Rs.1,15,974/-, payable on

or before 7th of every month, with 15% enhancement for every 3 years. The plaintiffs claimed the property as legatees pursuant to the bequeaths made by their late father-cum-testator by name, Sri K. Konda Reddy (died intestate on 10.02.2010), under a registered Will dated 30.10.2008, as absolute owners for the testator acquired the property (bequeathed) by virtue of registered Gift Settlement Deed dated 21.07.2006 executed in his favour by the 2nd defendant (no other than the son of donee).

3. The suit was filed for the reliefs, directing the 1st defendant to pay a sum of Rs.6,66,850/-, being arrears of rent from May to September, 2010, at Rs.1,33,370/- per month, besides liable to pay monthly rent continuously thereafter, and to direct the 2nd defendant to pay Rs.3,65,318/-, being the rent already collected by him from the 1st defendant for the months of February to April, 2010, respectively, and for costs of the suit and such other reliefs.

4. The plaintiffs suit claim is based on the Will referred to supra. The written statement of the 1st defendant/tenant is, while admitting the tenancy and liable to pay rents pursuant to the lease deed dated 18.03.2007, he claimed that they sought permission of the Court to deposit rents from December, 2010 and ready to pay or deposit the rents, at all times, without default on their part, by denying any contra averments in saying, because of the disputes between the 2nd

defendant and the plaintiffs from exchange of notices to avoid double claims, the rents were not paid earlier.

5. The written statement of the 2nd defendant is, while admitting the plaintiffs' entitlement pursuant to the bequeath under the Will, stating that he is the executor pursuant to the bequeath made in the Will and what all the rents paid by the 1st defendant for the months of March and April, 2010 deposited by him in Karnataka Bank, Secunderabad, vide A/c.No.9814 and the rent for February, 2010 was utilized for the funeral expenses and other ceremonies of their late father K. Konda Reddy and he requested the 1st defendant to deposit rents after April, 2010 in the aforesaid bank account and he deposited a sum of Rs.2,02,431/- into the said account and continued to deposit the rents up to November, 2010 and the 2nd defendant is entitled to use the amounts for the purpose directed in the Will. The 1st defendant is not paying rents after November, 2010, either to the account of Karnataka Bank or to the 2nd defendant. It is to say further that, pursuant to the Will, on the bequeath made therein, the testator postponed the legacy under the Will till the life time of their mother i.e., Smt. K. Vimala, while appointing the 2nd defendant as Executor under the Will and, it is his duty, as an Executor, to take custody and care of the property, including collection of rents, till it is handed over to the

legatees, as per the conditions in the Will, and the plaintiffs are not entitled to receive the rents.

6. Undisputedly, the mother of the plaintiffs and the 2nd defendant are no more, as she died later on 30.12.2012. While so, whatever the 1st defendant is depositing as rents, the plaintiffs sought for withdrawal of the same by filing I.A.No.789 of 2015, which is covered by the impugned dismissal order.

7. The averments made in the affidavit filed in support of the said application by the plaintiffs, save the facts supra, are that, pursuant to the application of the 1st defendant in I.A.No.483 of 2011 to deposit rents from December, 2010 to the credit of the suit, the trial Court permitted on 01.04.2011 and however, the 1st defendant committed default and did not deposit the rents regularly and not even given notice of deposits and the plaintiffs thereby filed O.S.No.63 of 2015 for eviction, by terminating the lease, and also by saying 4th floor of the building is in illegal occupation of the 1st defendant. It is therefrom, saying that there is no legal impediment for permitting withdrawal of the money depositing by the 1st defendant as per the orders in I.A.No.483 of 2011 to the credit of the suit, which is without prejudice to their rights to the claim of eviction of the 1st defendant in O.S.No.63 of 2015 and the suit claim in O.S.No.189 of 2010 and hence, it is just

and necessary to permit withdrawal of the amounts in deposit.

8. The 2nd defendant as 2nd respondent filed counter on 18.11.2015 saying, the suit O.S.No.189 of 2010 is not related to eviction, but limited to the scope of recovery of money collected towards arrears of rent by the 2nd defendant, payable by the 1st defendant. The 1st defendant filed I.A.No.483 of 2011 and deposited rents, which will be subject to the result of the suit and it would be premature to claim entitlement to receive rents, saying any legal impediment, as if, even the 2nd defendant filed a written statement stating that he is the executor, who is permitted to collect the rents till the properties are handed over as per the Will, that there are disputes in the partition suit and other suits (viz. O.S.Nos.6 of 2012, 93 of 2015 and 117 of 2014 filed by the plaintiffs in relation to the properties of their parents and in those circumstances, the plaintiffs cannot be permitted to withdraw the rents in deposit and the suit claim is also interlinked with the other suits supra, and permitting for withdrawal of the amounts of rents deposited by the 1st defendant supra, is granting the relief, which is not sought for, at the interlocutory stage and hence, prayed to dismiss the application.

9. It is pursuant to the above, the lower Court, by impugned order dated 07.04.2016, dismissed the application,

saying that the 1st defendant is, admittedly, a legatee under the registered Lease Deed and not disputing the terms of the lease, the father of the plaintiffs and 2nd defendant executed registered Will relied on by the plaintiffs, not in dispute, including for the terms covered by the lease of the 1st defendant and there are other suits pending between the parties i.e., plaintiffs and the 2nd defendant, and when there is a dispute regarding Will, with conflicting contentions and also from the other suits pending, without deciding those disputed aspects, including the contentions, pursuant to the Will, the plaintiffs are not entitled to withdraw the amounts. Impugning the same, the present revision is filed, as perverse and unsustainable order of the lower Court.

10. Heard both sides, at length, and perused the material available on record.

11. Undisputed terms of the registered Will, running in three pages, particularly at page 2, speaks as follows:

“That I am very much devotee to T.T.D and Padmavathi Ammavaru, therefore, my two daughters shall out of the rent received shall give Rs.10,000/- (Rupees ten thousand only) to T.T.D Hundi and Rs.10,000/- (Rupees ten thousand only) to Padmavathi Ammavaru Temple, Mangapuram, Tirupathi each, at every six months i.e. yearly twice to above said deities.

I hereby appoint my son as the Executor of this Will so far as the above specific religious and devoted stipulations are concerned and for the maintenance of the Commercial Complex bequeathed to the beneficiaries.

The beneficiaries shall also set apart expenditure towards maintenance of Schedule Property, i.e. colours repairs etc. at every five years spell and the expenditure whatever to be incurred shall be handed over to the Executor of this Will Sri K.Pratap Reddy.

That out of the rent received both daughters shall set apart one month rent every year for the Welfare of Poor and destitute measure of charity which shall be looked after by the executor.

I hereby executed this last Will bequeathing the said property to my Natural Daughters with all rights, title, interest and easements and liberties and all powers and they can enjoy it as the sole and absolute owners thereof without any let or hindrance of others.

I declare that except daughters above named, there will be none having any claim over it and they shall enjoy the property as the sole, and absolute owner thereof without any let or hindrance from any one.

I declare that the beneficiaries cannot sell or gift the properties but can enjoy the property and its income.

I declare that this Will shall come into force only after my death and my wife death and I hereby reserve my right to amend after or even cancel this Will at any future date prior to my death. I declare, further that I did not make till date any religious declarations.”

12. The fact that the mother of the plaintiffs and the 2nd defendant later died is not in dispute. The Will speaks, from the above all, the plaintiffs, being the daughters of the testator, to whom the bequeaths made, of the said property with all rights, title, interest and easements, liberties and all powers to enjoy fully, as sole and absolute owners, without any let or hindrance of others and none have any claim over the properties, but, for the daughters, who shall enjoy as sole and absolute owners, and the beneficiaries, however, cannot sale or gift the properties, but, can enjoy the properties and

its income and it is preceded by the conditions, that the two daughters shall give Rs.10,000/- each, for every six months, out of the rents received from the properties, to the TTD Hundi and Padmavathi Ammavaru Temple, respectively. The executant appointed the 2nd defendant – son, as executor of the Will, so far as above specific religious and devotee charities concerned, and for maintenance of the commercial complex bequeathed to the beneficiaries. The beneficiaries shall also set apart expenditure towards maintenance of the schedule property i.e., colours, repairs etc., for every five years spell and the expenditure, whatever incurred, shall be handed over to the executor of the Will, out of the rents received by both daughters. They shall also set apart one month rent, every year, for the welfare of poor and destitute, as a measure of charity, which shall be looked after by the executor.

13. From the above, the Will itself speaks, the legatees, who are the plaintiffs, being two daughters, are entitled to collect the rents, however, out of the rents they have received, to set apart Rs.10,000/- each, for every six months, for the Hundis of TTD and Padmavathi Ammavaru, and they have also to set apart, for every five years spell, for maintenance of the property by the 2nd defendant, for meeting the expenses required, and they shall also set apart, out of the rents, one month rent, every year, for the welfare of the poor and

destitute, as a measure of charity, which shall be looked after by the executor - 2nd defendant, who is appointed as executor only for limited purpose, to see that out of the rents being collected by the plaintiffs-legatees from the tenants of the premises, they have to set apart one month rent every year to the charitable purpose to be spent by the 2nd defendant and Rs.20,000/- every year, equally, to the Hundis of TTD and Padmavathi Ammavaru i.e., Rs.10,000/- each for every six months and the said compliance to be supervised by the 2nd defendant, so also the 2nd defendant to attend maintenance of charities, out of the provision to be made by the plaintiffs for colouring etc., once in five years. There is nothing from the bequeaths in the Will authorizing the 2nd defendant to collect or to retain or to appropriate the rents.

14. Anyhow, it is premature to discuss further by dwelling into the main *lis* of the suit, but, suffice from the above to say, the plaintiffs are entitled to withdraw the rents in deposit made by the 1st defendant, subject to the above supervision, to be meted out by the plaintiffs, the trial Court order is liable to be set aside and the revision petition, to that extent, is to be allowed.

15. It is needless to say that, as already suit for eviction is filed by the plaintiffs against the 1st defendant, the rents hereinafter shall be deposited only to the credit of that suit for

eviction and not in the present suit, but for the trial Court, to take care of the above observation in so directing.

16. Accordingly and in the result, the revision petition is allowed and the lower Court is directed to permit the plaintiffs, subject to giving an undertaking to meet all the provisions by allocating out of the amounts, the amounts required for one month rent, every year, for charitable purpose to be given to the 2nd defendant; and also Rs.10,000/- each for every six months to the Hundis of TTD and Padmavathi Ammavari Temples, leave about the provision for colouring and other maintenance, once in five years for providing and accounting from the date of death of their mother on 30.12.2010.

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

Dr. B. SIVA SANKARA RAO, J

21.10.2016
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