

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

-
Civil Revision Petition No.5423 of 2015
-

ORDER:

This revision under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 ('the Act', for brevity) by the unsuccessful appellant is directed against the orders dated 17.11.2015 of the learned Principal Senior Civil Judge, Vijayawada of Krishna District passed in RCCMA.no.49 of 2015 whereby the learned Principal Senior Civil Judge while dismissing the said appeal had confirmed the orders dated 13.10.2015 of the learned Rent Controller passed in IA.no.476 of 2015 in RCC.no.76 of 2010 filed under Order 22 Rule 3 and Section 151 of the Code of Civil Procedure ('the Code', for short).

2. I have heard the submissions of the learned counsel for the revision petitioner and the learned counsel for the respondents 2 to 4. I have perused the material record.

3. The parties shall hereinafter be referred to as the revision petitioner/tenant and the respondents for convenience and clarity.

4. To begin with, the facts, to be stated as a prelude to this order, in brief, are as follows:

The 1st respondent (since died), who is the landlord, had filed the RCC.no.76 of 2010 ('the RCC', for brevity) for eviction of the revision petitioner/tenant. While so, on the death of the 1st respondent, who is the sole petitioner in the RCC, the respondents 2 to 4 filed the aforementioned IA.no.476 of 2015 in the above RCC under Order 22 Rule 3 read with Section 151 of the Code requesting the learned Rent Controller to implead them as petitioners 2 to 4 in the RCC, they being

the legal representatives of the deceased 1st respondent/landlord, that is, the petitioner in the RCC. The revision petitioner/tenant having filed a counter resisted the said petition. The learned Rent Controller allowed the said petition. The aggrieved revision petitioner/tenant filed the aforementioned RCCMA.no.49 of 2015 before the learned Principal Senior Civil Judge, Vijayawada. On merits, the learned Principal Senior Civil Judge dismissed the appeal of the revision petitioner/tenant. Therefore, the revision petitioner/tenant is before this Court.

5. The case of the respondents 2 to 4 may be first stated, in brief, as follows:

The 1st respondent is the son of the 2nd respondent, the husband of the 3rd respondent and the father of the 4th respondent. He had filed the RCC against the revision petitioner/tenant. The revision petitioner/tenant is resisting the said RCC by filing a counter. During the pendency of the RCC, the 1st respondent/landlord died on 25.07.2015 leaving behind him the respondents 2 to 4 as his legal heirs. However, he had executed a Will on 16.10.2014 in a sound and disposing state of mind and the same was duly registered in the Office of the Sub-Registrar, Vijayawada as document no.483 of 2014. It is his final testament. Under the Will, he had bequeathed the present RCC schedule property to the 4th respondent. Though the 4th respondent is alone entitled to the property, all the respondents 2 to 4 being the legal heirs of the deceased sole petitioner/landlord filed the petition for their impleadment as petitioners 2 to 4 in RCC, they being necessary parties and as they are advised to do so.

6. Per contra, the case of the revision petitioner/tenant is this: 'Admittedly, the respondents 2 to 4 are submitting that the deceased 1st respondent had executed the Will in a sound and disposing state of mind and that the said Will is registered and that it is his final testament and

that under the said Will, the property exclusively devolved upon the 4th respondent and that he is alone entitled to right, title and interest in the schedule property. In view of the above pleadings of the respondents 2 to 4, the petition to implead all the respondents 2 to 4 as party petitioners 2 to 4 to the RCC on the ground that they are the legal heirs of the deceased landlord/petitioner in the RCC is not maintainable and it is impermissible under law to implead all of them as parties to the RCC. The petition is not maintainable without producing and proving the Will allegedly executed by the 1st respondent/landlord.'

7. At the hearing, the learned counsel for the revision petitioner/tenant while reiterating the pleaded case of the revision petitioner/tenant would contend as follows: 'When the respondents 2 to 4 are relying upon the Will of the 1st respondent and when admittedly under the said Will of the 1st respondent the property devolved upon the 4th respondent alone exclusively, the 4th respondent is required under law to prove the Will and get himself alone impleaded as 2nd petitioner in the RCC but the collective request of all the respondents 2 to 4 who are the mother, wife and son of the deceased 1st respondent to come on record as petitioners in the RCC is untenable and cannot be entertained.

Unless the Will is produced and proved, the 4th respondent cannot be permitted to be impleaded as a party petitioner in the RCC. At one breath, the respondents 2 to 4 cannot claim that the deceased 1st respondent executed a Will and that the property exclusively devolved upon the 4th respondent under the said Will and cannot further contend at another breath that they are all entitled to be impleaded as party petitioners in the RCC being the legal representatives of the deceased testator. Both the Courts below did not properly appreciate the facts and the legal position applicable to the facts of the case and had erroneously allowed the petition of the respondents 2 to 4 and permitted them to

come on record in the RCC. Under Rule 19 of the A.P. Buildings (lease, rent and eviction) Control Rules, 1961, every application for making the legal representatives of the deceased party as parties to a proceeding under the Act shall be filed within 30 days and a 'legal representative' for the purpose of the said Rule means a person who in law represents the estate of the deceased person and the person on whom the estate devolves on the death of a party suing or sued. Further, when there is a question as to whether any person is or is not the legal representative of the deceased person, such question shall be referred to a civil Court for determination. Hence, unless the civil Court determines the rights *inter se* of the respondents 2 to 4 and the question as to on whom amongst them the estate of the deceased 1st respondent devolved on his death, they cannot be brought on record.'

8. On the other hand, the learned counsel for the respondents 2 to 4 while supporting the orders of the Courts below and while reiterating the contentions of the respondents 2 to 4 would submit that though the 1st respondent had executed a Will and the said Will is registered and that under the said Will the property exclusively devolved upon the 4th respondent, to avoid un-necessary complications, the respondents 2 to 4 have decided to make a request for impleadment of all of them as party petitioners in the RCC. He would further submit that amongst respondents 2 to 4 there are no rival claims *inter se* and that when there are no rival claims, no question arises for determination by a civil Court and, therefore, there is no necessity to refer the matter to the civil Court.

9. I have given earnest consideration to the facts and the submissions. I have also gone through the decision in **Heera Chand v. Ommi Setti (died) and another [2011 (4) ALT 223]** relied upon by the learned counsel for the respondents 2 to 4. On facts, in the cited case, the Court found that there is no rival claim by any of the legal heirs of the

family members of the 1st petitioner therein and, therefore, the tenant cannot be heard to say that there is a genuine dispute in the claim of the 2nd petitioner therein. Having so found on facts, in the cited decision, it was held that Rule 19 has no application to the facts of the case. Reverting to the facts of the present case, admittedly, the 1st respondent, who is the landlord, had filed the RCC against the revision petitioner/tenant. On his death, during the pendency of the said RCC, the respondents 2 to 4 herein filed the instant application for their impleadment as petitioners 2 to 4 in the RCC, they being admittedly the mother, the wife and the son of the deceased petitioner therein. However, while seeking their impleadment as petitioners 2 to 4 in the RCC, they have *inter alia* stated that the deceased 1st respondent/landlord executed a Will and that the said Will is registered and that under the said Will he had bequeathed the property to the 4th respondent herein exclusively and that despite existence of such Will, all the respondents 2 to 4 herein are requesting to be impleaded as petitioners 2 to 4 in the RCC for abundant caution and to avoid any complexities, in future. The only contention of the revision petitioner/tenant is that since there is a Will as per the pleadings of the respondents 2 to 4 herein and that under the said Will, the property was exclusively bequeathed to the 4th respondent, the respondents 2 to 4 herein are required to prove the Will and that unless the Will is produced and proved, their request for impleadment cannot be entertained and decided. Be it noted that there are no rival claims amongst the respondents 2 to 4 *inter se*. They are collectively making a request to come on record as petitioners 2 to 4 in the RCC on the death of the deceased petitioner therein. Despite the existence of a Will, when the Will is not yet proved, admittedly, all the respondents 2 to 4 are entitled to come on record, more particularly, when their relationship with the deceased 1st respondent is not disputed. The question of reference of

the dispute to a civil Court arises only if there are rival claims. As in the case on hand, there are no such claims and as no question arises to be determined by a civil Court, the contention of the revision petitioner/tenant being untenable is liable for rejection and is accordingly rejected.

10. Viewed thus, this Court finds that the Courts below are justified in allowing the request of the respondents 2 to 4 herein for their impleadment as petitioners 2 to 4 in the RCC.

11. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

14th June 2016
Vjl