

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

-
Civil Revision Petition No.19 of 2013
-

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the unsuccessful petitioner/defendant is directed against the orders dated 12.12.2012 of the learned I Additional Senior Civil Judge, Ranga Reddy District passed in IA.no.1360 of 2012 in OS.no.1643 of 2009 filed by the defendant under Order VII Rule 10 of the Code of the Civil Procedure, 1908 requesting to return the plaint to the plaintiff on the ground that the trial Court lacked pecuniary jurisdiction to entertain the suit.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendant ('the defendant', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The plaintiff brought the suit against the defendant-M/s.TRIO Traders for eviction and recovery of vacant and peaceful possession of the plaint schedule mulgi bearing no.19 in Janaki Complex bearing municipality no.3-97 situate at Kukatpalli more fully described in the schedule annexed to the plaint and for other reliefs viz., recovery of arrears of rent, mesne profits (past and future) and costs. The defendant concern filed a written statement resisting the suit. During the pendency of the suit, the defendant filed the aforementioned application for return of the plaint. The said IA was resisted by the plaintiff. On merits, the trial Court had dismissed the petition of the defendant. Therefore, the defendant is before this Court.

4. The case of the defendant, in brief, is this:

The suit is coming for cross-examination of PW1. The mulgi was taken on lease on a monthly rent of Rs.1,900/-. The said fact is evident from the rent receipt for the month of March 2008 issued by the plaintiff. The said fact is admitted by the plaintiff. However, the claim of the plaintiff is that the rent for the mulgi was enhanced to Rs.8,700/- from 01.03.2008 onwards. The said contention is not true and correct. Admittedly, the rent that was received for the month of February 2008 was Rs.1,900/-. The claim of the plaintiff that the rent has been enhanced to Rs.8,700/- from March, 2008 is contrary to the lease document and records available. In terms of the rental agreement, the plaintiff is entitled to the enhanced rent at the rate of Rs.2,000/- per month from March, 2008. When this defendant sent the said rent at the rate of Rs.2,000/- per month for the said month and for the subsequent months up to March, 2009, all the money orders were returned with the same endorsement 'continuously absent'. As the plaintiff had avoided receiving the monthly rents, the defendant had filed RCC.no.3 of 2009 on the file of the learned Rent Controller, Miyapur and in that RC, the plaintiff has not chosen to file his counter and is cleverly avoiding the proceedings before the learned Rent Controller. The learned Rent Controller's Court is alone having jurisdiction. As the monthly rent, which was Rs.1,900/- by February 2008 was enhanced to Rs.2,000/- from March 2008 onwards and as the monthly rent for the mulgi is only Rs.2,000/-, the civil Court has no pecuniary jurisdiction. In view of the fact that the civil Court lacks pecuniary jurisdiction, the case has to be transferred to the Court of the learned Rent Controller as the said Court is alone having jurisdiction to try the present *lis*. A transfer OP in TrOP.no.1233 of 2009 was filed by the plaintiff before the learned District Judge, Ranga Reddy seeking transfer of the RC.no.3 of 2009 to be tried along with the present suit. When the learned District Judge, who is not inclined to take up the matter, questioned the maintainability of the transfer OP, the plaintiff conveniently got the Tr.OP dismissed for default. The plaintiff is not filing counter and postponing the proceedings in the RC on the pretext that the Tr.OP was pending. Hence, the plaint may be returned to the plaintiff.

5. The case of the plaintiff, in brief, is this:

The petition is not maintainable. The allegations are false and baseless. The tenancy in regard to suit schedule mulgi is governed by the provisions of the Transfer of Property Act. Having taken the mulgi on lease, the defendant had initially agreed to pay a monthly rent of Rs.1,900/-. The said rent is payable on or before the 1st of every month in advance. Subsequently, the rent was enhanced to Rs.8,700/- per month. The defendant had stopped payment of monthly rents from 01.03.2008. After issuance of a notice terminating the tenancy, the present suit for eviction and other reliefs is filed. Since the monthly rent is Rs.8,700/- the civil Court/trial Court is having pecuniary jurisdiction. The petition may be dismissed.

6. At the time of enquiry before the trial Court, no documents are exhibited. Having regard to the pleadings of the parties, the trial Court had dismissed the petition. Aggrieved of the said orders, the defendant had preferred this revision.

7. At the hearing, the learned counsel for both the sides advanced arguments in line with the respective pleaded cases of the parties.

8. I have given earnest consideration to the facts and also the submissions, which are made in line with the cases of the parties and which are stated supra.

8.1 Undeniably, the plaintiff instituted the suit against the defendant for eviction and other reliefs *inter alia* pleading in the plaint that the monthly rent is Rs.8,700/- per month from March, 2008 onwards. According to the plaintiff, before instituting the suit, a notice terminating the tenancy was also issued. The defendant is contending that the monthly rent initially was Rs.1,900/- and that the rent receipt issued by the plaintiff towards rent of March, 2008 clearly evidences the said fact and that the plaintiff is entitled to the enhanced rent of Rs.2,000/- per month from March, 2008 onwards and that since the monthly rent is Rs.2,000/- and not Rs.8,700/- as being claimed by the plaintiff, the civil Court has no pecuniary jurisdiction to entertain the suit and that in fact when the rents sent by money orders were refused to be received and were returned with the postal endorsement 'continuously absent', the defendant

had also filed RC.no.3 of 2009 on the file of the learned Rent Controller, Miyapur and that the Court of the learned Rent Controller is alone having jurisdiction to entertain any proceeding between the parties and not the civil Court.

8.2 In fact, though the petition is filed claiming that the civil Court is not having pecuniary jurisdiction to entertain the suit, from the contentions of the defendant before this Court, it appears that the contention indeed is that the civil Court is not having inherent jurisdiction and that the tenancy between the parties is governed by the provisions of the Rent Control Act. However, the specific case of the plaintiff is that the tenancy is governed by the provisions of the Transfer of Property Act. As per the submissions of the learned counsel for both the sides, the vital question viz., whether the tenancy is governed by the provisions of the Rent Control Act or the Transfer of Property Act depends upon the decision on the the issue in regard to the quantum of the monthly rent. A meaningful reading of the plaint would show that the suit was instituted on the basis of the pleading that the monthly rent is Rs.8,700/-. The defendant is disputing the said fact and is making a rival claim that the monthly rent is Rs.2,000/- from March, 2008 onwards. Therefore, the said issue has to be decided only after full-fledged trial and cannot be prejudged in this application for return of the plaint filed by the defendant. At this stage, it is not possible to formulate an opinion that the plaint should be returned as the disputed question regarding quantum of monthly rent has to be decided only after both the parties are given an opportunity to adduce evidence in support of their respective contentions.

9. Having regard to the reasons, this Court finds that the trial Court is justified in dismissing the petition of the defendant and that the revision is misconceived and is liable to be dismissed.

10. Before parting with the case, be it noted that the learned counsel for the defendant relied upon the following decisions.

- 1. Devasahayam (dead) by LRs v. P. Savithamma and others** ^[1].

2. The Church of Christ Charitable Trust & Educational Charitable Society, rep., by its Chairman v. M/s.Ponniamman Educational Trust rep., by its Chairperson/Managing Trustee^[2].

The decision in Devasahayam (1st cited) is relied upon in support of the proposition that civil Court derives no jurisdiction only on the basis that the tenant has denied title of the landlord; and, that the civil Court can only derive jurisdiction if the Rent Controller has given a finding as to whether the denial by the tenant is *bona fide* or not as required under the proviso to Section 10(1) of the A.P. Buildings (Rent, Leave and Eviction) Control Act, 1960. As already noted, in the case on hand whether the tenancy is governed by the provisions of the Rent Control Act or the provisions of the Transfer of Property Act has to be determined only after full-fledged trial and, therefore, the decision cited is not helpful to the defendant at this stage of the matter, in any view of the matter. Moreover, in this case, the defendant is not denying the title of the landlord and also the jural relationship but is only disputing the quantum of rent while admitting the tenancy. Hence the decision is not helpful to the defendant.

The decision in **The Church of Christ Charitable Trust** (2nd supra) is relied upon in support of the contention that while scrutinizing the plaint averments, the Court can look into the documents filed with the plaint. There is no dispute with the legal proposition. It is fairly conceded that while considering the request of the defendant for return of the plaint, the Court has to only look into the plaint averments and also the documents, if any, filed with the plaint and which are incorporated by reference in the plaint. Be it noted that this Court having referred to the peculiar facts and the circumstances of the case and the reasons assigned had already held that the petition for return of the plaint is misconceived in the facts and circumstances of the case and that the issues raised by the defendant have to be adjudicated only after full-fledged trial, that is, after both the parties adduced evidence and not at an interlocutory stage and that the issues raised cannot be prejudged in the interlocutory stage. Hence, this decision is also

not helpful to the case of the defendant.

11. In the result, the Civil Revision Petition is dismissed with costs.

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

M. SEETHARAMA MURTI, J

14th June 2016
Vjl

[\[1\]](#) (2005) 7 SCC 653

[\[2\]](#) 2012 8 SCC page 706