

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.5352, 5290 and 5264 OF 2013

COMMON ORDER:

The revision petitioner (Smt.Naheed Jahan) in all the three revision petitions is no other than alleged tenant of the demised property and the respondents herein are no other than children and husband of late Faheema Begum @ Faheemunnisa, the alleged owner. As per Ex.P6 = P7 translation of the sale deed dated 11.06.1965 shows her name as Faheema Begum. The R.C. No.8 of 2009 was filed by four respondents herein for eviction of the revision petitioner as sole respondent-alleged tenant on the ground of bonafide requirement, willful denial of title and willful default in payment of rent.

2) The averments in the eviction petition on these three grounds supra in nut shell are that said Fahima Begum is the owner, who purchased the alleged property under Ex.A6—Urdu sale deed from the original owner Jaffer Hussain Khan and the alleged lease entered was in the year 1971 orally during the lifetime of Faheema Begum and her husband i.e., 4th eviction petitioner—Saleh Bin Ahmed with the tenant—respondent to the eviction petition, who allegedly committed default in payment of rents and failed to vacate even to the demands for bonafide requirement and even chosen to deny title malafide and thereby liable to be evicted. The counter contest is denial of the case of the petitioners by the respondent including the relationship of landlord and tenant, in saying never a tenant much less under 4th petitioner and his late wife and it is for the petitioners to establish that Faheema Begum is owner of the property and once there is no tenancy subsisting, the question of demands for eviction either for bonafide requirement or for alleged willful default does not arise.

3) It is important to note that prior to filing of R.C.No.8 of 2009, Ex.P3—legal notice dated 13.11.2008 was issued to the revision petitioner herein with almost the claims of the eviction petition on the three grounds. Exs.P4 and P5 are the postal receipt and acknowledgement of the registered post. Undisputedly, there is no reply. As per the expression of this Court in ***Chapala Hanumaiah vs Kavuri Venkateswarlu***^[1] on the scope of Section 3 of the Evidence Act read with Section 114 of Evidence Act for non-giving of reply, though not amounts to admission of the contents of the notice, the conduct of the person to whom the notice served to draw adverse inference that either he has no defence to give reply or he has no case to set up in any manner much less by denying the notice averments for no prudent person would keep quiet otherwise by said silence with no reply.

4) It is also one of the important facts, leave it as it is, as per Order VIII Rule 32 C.P.C read with Section 58 of Evidence Act, the denial in counter and written statement from reading of Section 141 C.P.C also for any proceedings for the proceedings of suit equally apply to these rent control cases and for non denial or no specific denial which tantamounts to no denial and once such is the case, there is no need of such facts to prove again. From these facts, it is to discuss the evidence on record, further on behalf of the petitioners PW.1—1st petitioner no other than claiming as one of the three children of the deceased Faheema Begum among four petitioners including her husband came to the witness box and deposed and placed reliance upon Ex.P1 to P9, which includes Exs.P3 to 7 referred supra and Ex.P9—municipal Corporation permission for the building construction, Ex.P1—sketch plan and the so-called rent receipt counter foil filed as Ex.P2. Apart from Ex.P9 alleged gift/settlement deed said to have been executed by respondent in favour of her son; in proof of the claim in the eviction petition on that it is sufficient to the

establishment of denial of title with no bonafides. **In RVEE Gounder**

Vs RVS Temple^[2] the Apex Court held that, in civil cases the proof is by preponderance of probabilities for including in suits relating to ejectment or declaration of title or for possession; particularly from para No.25 onwards categorically observed in this regard in a suit for declaration of title or injunction based on title, the proof is by preponderance of probabilities and that does not mean even statistic and once plaintiff is able to establish the cause by preponderance of probability, the burden shifts on the defendant to rebut by adducing any evidence, failing which the Court has to take for all purposes of the case alleged is proved to get the relief. From this once there is no denial of source of title but title with no bonafides and not a case of payment of rents and not a case of no bonafide requirement in the counter of the respondent, leave about no reply to the legal notice and in the cross examination of PW.1 also without even come to witness box and the counter is silent as to any source of right to continue or occupy the property, and even subsequently executed the original of alleged Ex.P9 Gift deed as if her property in favour of her son and, that too, without even mentioning any source of title, if at all, her property not even propounded in the counter if not tenant to occupy in her own right to claim adverse possession; it is suffice to say from the evidence on record as proved by the eviction petitioners that they are the children and husband of the deceased the original owner, Faheema Begum, who died intestate in 1994 and also of the respondent is a tenant under the original owner and after her demise by continuing in possession and from the denial of title and from not a case of the respondent, that he ever paid any rent suffice to say from the proof and from the respondent failed to come to witness box by not even producing any iota of evidence to support the vague contention in the counter much less to establish any source of title to her to execute Ex.A9 document that also tantamounts to denial of title without bonafides and further establishes not only bonafide requirement but

also denial of title with no bonafides and willful default for not a case of any payment of rent, thus entitled to eviction. From the factual scenario when the Rent Controller failed to appreciate the evidence on record placed, the appellate Court in R.A. No.178 of 2011 is right in reversing the order and passing order of eviction and thereby even in the revision impugning the order of the appellate Court, practically there is nothing to interfere.

5) Needless to say, there are other eviction petitions viz., R.C. No.419 of 2009 on the ground of willful default arose from the subsequent cause of action and R.C. No.118 of 2010 on the ground of denial of title as if also by subsequent cause of action, that were also dismissed before the rent controller and appeals in R.A. No.179 of and 180 of 2011 of the landlord were allowed reversing the finding and the other two C.R.P Nos.5290 and 5267 of 2013 are outcome there from and therein also, there are no grounds to interfere. Needless to say, there is no further necessity of discussing the facts and findings in the two revision petitions covered by R.A Nos.179 and 180 of 2011, from the discussion in C.R.P. No.5352 of 2013 filed against R.A. No.178 of 2011 in detail supra, is suffice to hold that the respondent—tenant, who is the revision petitioner, is liable to be evicted as the three requirements as pleaded in the petition for eviction are provided as indicated above.

6) Having regard to the above, the revision petitions are dismissed. However, as the revision petitioner is in occupation since long time and she has to search for her son and family members an alternative occupation, time is granted for eviction till 31.12.2016, failing which the decree holders/ petitioners in R.C. No.8 of 2009 and R.C. No.118 of 2010 and R.C. No.419 of 2009 are entitled to execute and evict the tenant through due process of law by recovering the costs. No order as to costs.

7) As a sequel, miscellaneous petitions if any pending in these Civil Revision Petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.02.08.2016

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[\[1\]](#) 1971 (1) An.W.R 65

[\[2\]](#) 2003(8)-Supreme Today-194 at 196