

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4183 of 2013

ORDER:

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This Civil Revision Petition under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 ('the Act', for brevity) is filed by the respondents in RC.no.485 of 2007 assailing the orders dated 07.08.2013 of the learned Additional Chief Judge-cum-appellate authority under the Act passed in RA.no.23 of 2012 whereby the learned appellate authority while allowing the said appeal had set aside the orders dated 11.10.2011 of the learned IV Additional Rent Controller, Hyderabad passed in the aforementioned RC.no.485 of 2007.

2. I have heard the submissions of the learned counsel for the revision petitioners/tenants and the learned counsel for the respondents/landlords. I have perused the material record.

3. The introductory facts, in brief, are as follows:

The respondents/landlords brought the RCC against the revision petitioners 2 and 3 and the 1st revision petitioner (since died) for eviction on the grounds of willful default in payment of rents and unauthorized sub-lease and the further ground that the revision petitioners have ceased to occupy the petition schedule property. The RCC was contested by the revision petitioners *inter alia* contending that the orders passed in earlier Rent Control Case proceedings in RCC.nos.247/1983 and 628/1999 operate as *res judicata* and that they have not sublet the entire or any portion of the property and that they are residing in the petition schedule property since 1956 and that they are in continuous possession and that there is no jural relationship. Having regard to the pleadings, the learned Rent Controller had framed the following points for consideration:

1. Whether the orders passed in earlier rental proceedings operate as *res judicata*?

2. Whether jural relationship of tenancy exists between the petitioners and the respondents in respect of petition schedule premises?
3. Whether the respondents have committed willful default in payment of rents from 01.01.1983?
4. Whether the respondents sublet the petition schedule premises?
5. Whether the respondents ceased to occupy the petition schedule premises?
6. To what relief the petitioners are entitled for?

[Reproduced verbatim]

During the course of enquiry, PW1 was examined and exhibits P1 to P6 were marked on the side of the respondents herein. RW1 was examined and exhibits R1 to R9 were marked on the side of the revision petitioners. On merits, the point in regard to *res judicata* was answered in favour of the respondents herein and the rest of the points were answered in favour of the revision petitioners and the RCC was dismissed holding that the respondents herein/landlords are not entitled to seek eviction of the revision petitioners from the schedule premises. As already noted, the appeal preferred by the landlords/respondents herein was allowed by the learned appellate authority under the Act. Therefore, the tenants/revision petitioners have filed the present revision petition.

3.1 During the pendency of the revision petition, the 1st revision petitioner had died; and the petitioners 2 and 3 are recognized as her legal representatives.

4. The learned counsel for the revision petitioners would contend as follows:

The learned Rent Controller had dismissed the RCC filed for eviction. The learned appellate authority by the order impugned had erroneously allowed the appeal of the respondents herein on mere assumptions and presumptions. The learned appellate authority had failed to appreciate the fact that OS.no.517 of 1985 was filed for declaration of title and recovery of possession and the said suit was dismissed and that the respondents herein had filed appeal in AS.no.82 of 1994 and that the same was allowed in part, but, was dismissed insofar as the relief of recovery of possession. The

appellate authority had allowed the rent appeal on the ground that the petitioners herein are in possession of the properties and that, therefore, they are presumed to be tenants of the property. The order impugned is based on presumptions and not on substantive evidence. The learned appellate authority had failed to appreciate the fact that the burden lies on the respondents herein to prove the jural relationship, i.e., the relationship of landlords and tenants between the parties and that the respondents had failed to discharge the said onus. The learned appellate authority had erroneously cast the burden wrongly upon the petitioners herein to prove the said relationship. The learned appellate authority ought to have seen that no evidence [oral or documentary] was adduced to prove the jural relationship and that the jural relationship is not established as required under the provisions of the Act. The Court below ought to have seen that PW1, who had stated that he is in possession of the counter foil of the rent receipts had failed to produce the same and, therefore, the Court below ought to have drawn an adverse inference against the respondents. The appellate authority had erroneously placed reliance on the findings in the judgment in As.no.82 of 1994 for coming to a conclusion that the petitioners herein are the tenants in the schedule property. The said approach is incorrect. The documents namely exhibits P1 and P2, which are certified copies of judgments in AS.no.82 of 1994 and SA.no.269 of 2001 are not relevant for deciding the relationship. The decision rendered by the Court below on the jural relationship is based on surmises and conjectures. The reliance placed on exhibits P1 and P2 is erroneous. Section 115 of the Indian Evidence Act is not applicable to the facts of the case; nonetheless, erroneous reliance was placed on the said provision of law. The Court below had failed to see that the findings in RCC.no.628 of 1999, which is a proceeding between the same parties, operate as *res judicata*. The Court below grossly erred in interfering with the well considered order of the learned Rent Controller.

5. *Per contra*, the learned counsel for the respondents/landlords while supporting the orders of the Court below had contended as follows:

Even the learned Rent Controller had recorded a finding on the first

point in favour of the respondents herein that the orders passed in the earlier rent control proceedings do not operate as *res judicata*. The Court below has rightly placed reliance on the judgments under exhibits P1 and P2 viz., judgments in As.no.82 of 1994 and SA.no.269 of 2001. In the said civil proceedings, the right of the respondents herein over the property is upheld; but, the said civil proceeding was dismissed in regard to the claim of recovery of possession as the tenancy is governed by the provisions of the Act. Therefore, the RCC is filed for eviction. The petitioners cannot be permitted to blow hot and cold. The findings recorded in the civil proceedings between the parties have become final and binding on the parties. Therefore, the contention that there is no relationship of landlords and tenants between the parties is incorrect. The Court below having considered the facts correctly and the evidence in proper perspective had recorded accurate findings while setting aside the orders of the learned Rent Controller. And, the Court below had rightly ordered eviction of the petitioners herein from the petition schedule property. There is no merit in the revision petition calling for interference of the orders of the Court below.

6. In view of the facts and contentions, it is necessary to first examine as to whether there is jural relationship of landlords and tenants between the parties. The respondents herein are the legal representatives of late Mubarak Khan. Late Mubarak Khan during his life time brought the suit- OS.no.517 of 1985 against the husband of the deceased 1st revision petitioner herein and the revision petitioners herein for declaration of title and recovery of possession of the subject property and also for recovery of arrears of rent and future mesne profits. In the said suit, the predecessor in interest of the respondents herein i.e., Mubarak Khan had *inter alia* contended that the subject property was purchased by his mother on 12.01.1955 from one Pochaiah for consideration of Rs.99/- under an unregistered document and that she had obtained physical possession of the property and that she had enjoyed the property till her death and that after her death on 07.04.1981 the said Mubarak Khan had succeeded to the said property being her son and sole legal heir and that he had continued in possession of the said property

even after the death of his mother and that on 01.06.1981 Abdullah Khan, the husband of the 1st revision petitioner herein had taken the premises on lease on a monthly rent of Rs.100/- payable in advance on the first day of each calendar month and that he had paid rent till December 1982 and that thereafter he had committed defaults in payment of rents and that, therefore, the said Mubarak Khan had filed RCC.no.247 of 1983 on the file of the learned I Additional Rent Controller and that the said Abdullah Khan had resisted the said eviction case by denying the title and that, therefore, the said suit-OS.no.517 of 1985 is filed for the aforementioned reliefs. The said suit was contested by Abdullah Khan and his legal representatives i.e., the revision petitioners herein by raising various defences and by *inter alia* contending as follows: - 'The sale deed obtained by the mother of Mubarak Khan is inadmissible in evidence. Mubarak Khan is no other than the son of the sister of Abdullah Khan. Abdullah Khan had maintained both Mubarak Khan and his mother by giving them financial assistance. The mother of Mubarak Khan was a resident of the suit house; and, till her death, she had resided in the suit house as a family member of Abdullah Khan. After her death i.e., since 1957, Abdullah Khan had alone continued in possession and enjoyment of the property as owner of the property. The property devolved upon the son of Pochaiah after the death of Pochaiah, as the property originally belonged to Pochaiah. The said Pochaiah mortgaged the suit property in the year 1942. He could not redeem the same. His son also was not in a position to repay the mortgage debt to one Lateefunnisa Begum, the mortgagee. The son of Pochaiah had approached Abdullah Khan and Abdullah Khan had repaid the mortgage debt to the said Lateefunnisa Begum and had redeemed the property. Abdullah Khan worked in Indian army and was for some time posted at Ambala city. One Keval Kishan Ashana, a resident of Ambala city happened to meet Abdullah Khan; and on that intimacy developed between them. Keval Kishan Ashana was transferred to Hyderabad. As Abdullah Khan was not in a position to leave the head quarters, he had requested Keval Kishan Ashana to get the property transferred in his name. Accordingly, Parthaswamy, the son of Pochaiah, had executed a registered sale deed on 07.08.1985 in favour of the said

Keval Kishan Ashana benami for the Abdullah Khan. Thus, Abdullah Khan and his family members i.e., the petitioners herein enjoyed the property with open and hostile title, which is adverse and perfected title to the property.’ In the said suit the following issues were framed: “(i) Whether the plaintiff (Mubarak Khan) is entitled to declaration that he is the absolute owner of H. No. 3666 corresponding to new no. 22.01.70, situated at Jam bagh, Tahmas Khanpura, Darulshafa, Hyderabad?; (ii) Whether the suit is barred by limitation?; (iii) To what relief?” After full-fledged trial, the said suit was dismissed. However, the first appeal in AS.no.82 of 1994 was allowed in part by the learned III Additional Chief Judge, City Civil Court, Hyderabad. The copy of the judgment in the said appeal suit is exhibit P1. The operative portion of the said judgment in the said first appeal suit reads as under: ***‘In the result, the appeal is allowed in part by setting aside the judgment dated 4.10.1993 passed in OS.no.517/85 on the file of the IV Assistant Judge, City Civil Court, Hyderabad, declaring the title of the plaintiff over the suit property and the claim for recovery of possession is dismissed as the same is barred by Section 10(1) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. Under the above circumstances, no order as to costs.’*** The second appeal in SA.no.269 of 2001 filed by Abdullah Khan and the revision petitioners herein was dismissed by this Court by a judgment dated 14.03.2006 under exhibit P2 confirming the decree and judgment in the above said first appeal suit. During the pendency of the second appeal, Mubarak Khan had died and the respondents herein were brought on record as his legal representatives. The judgments under exhibits P1 and P2, wherein the title of the respondents herein was declared but their right to recover possession was declined on the ground that the tenancy is governed by the provisions of the Act, have become final and binding on the parties. Therefore, it can safely be concluded that the respondents herein are the owners/landlords and that they are entitled to seek eviction of the tenants/revision petitioners herein from the schedule property by invoking the provisions of the Act.

7. Be it noted that the conclusions recorded above that in view of the

findings in the civil suit, which have become final, the respondents herein are entitled to seek eviction in the instant rent control proceedings need further final confirmation in view of the following contentions of the learned counsel for the revision petitioners.

Firstly, he had contended that since two earlier rent control cases were dismissed, the said orders in the said rent control cases operate as res judicata and that, therefore, the judgment of the civil Court in the civil suit wherein the title of the respondents was declared and a further finding that the tenancy of the revision petitioners is governed by the provisions of the Act are of no avail to the respondents. It is an admitted fact that one of the earlier rent control proceedings viz., RCC.no.628 of 1999 filed by Mubarak Khan against the revision petitioners herein for eviction was dismissed as abated on the death of Mubarak Khan, the sole petitioner therein. The said fact is evident from exhibit R6, the order dated 31.01.2007 passed in RC.no.628 of 1999. Further, the other RCC.no.247 of 1983 (new RC.no.1284/1986), which was earlier filed by Mubarak Khan against Abdullah Khan for eviction was dismissed for default on 16.10.1986 by the learned IV Additional Rent Controller, Hyderabad. The said fact is evident from exhibit R5. Thus, both the earlier rent control proceedings are not decided on merits. Therefore, the contention that the orders in the earlier rent control cases operate as res judicata and that, therefore, the learned Rent Controller and that the learned appellate authority under the Act had no jurisdiction to entertain the rent control case and order eviction of the revision petitioners are devoid of merit.

Secondly, the learned counsel for the revision petitioners having first pointed out that a perusal of exhibit P1 would show that the revision petitioners and their predecessor-in-interest, that is, Abdullah Khan, who is the 1st defendant in OS.no.517 of 1985 have categorically contended in the civil suit that the suit is not maintainable in view of the provision of Section 10 of the Act had then placed reliance on the *proviso* to Section 10(1) of the Act and contended as follows: - 'Provided that when the tenant, denies the title of the landlord, the Controller shall first decide whether the denial is *bona fide*

and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil Court and then the Civil Court may pass the decree for eviction on any one of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded. The civil Court has no jurisdiction to pass a decree for declaration of title unless the Rent Controller records a finding to the effect that the denial of title by the tenant is bona fide as laid down in the *proviso* to sub section (1) of Section 10 of the Act. The landlord shall not be entitled to sue for eviction of the tenant in a civil Court without any such finding recorded by the learned Rent Controller.’ In support of the said contention, reliance was placed on the following decisions:

i) In **Isabella Johnson v. M.A. Susai**^[1] the ratio laid down is as follows: **‘In our opinion a Court which has no jurisdiction in law cannot be conferred with the jurisdiction by applying principles of res judicata. It is well settled that there can be no estoppel on a pure question of law and in this case the question of jurisdiction is a pure question of law.’**

ii) In **G. David @ Devaiah v. Saramma**^[2], the ratio is as follows: **‘Where the tenant disputes the relationship of landlord and tenant, while admitting the title of the landlord, it is not only necessary to make an elaborate/regular enquiry in case an application u/s11 is filed in order to determine whether the relationship of landlord and tenant subsisted and if a finding is given to the effect that such relationship subsists, then it is necessary to pass order u/s.11(1) of the Rent Control Act directing the tenant to pay the arrears within the stipulated time, if there are arrears, failing which an order under Section 11(4) will be passed, and it is also necessary to enquire under Section 10 in order to decide whether there are any grounds for eviction. Of course, if in the enquiry under Section 11, the Rent Controller holds that the relationship of a landlord and tenant does not subsist, then it is a case of not only dismissing the application under Section 11 but also a case of dismissal**

of the petition filed under Section 10, for the Rent Controller has no right to pass an order of eviction unless there is relationship of landlord and tenant.' Placing reliance on this decision, it is contended that in the case on hand neither the appellate authority nor the Rent Controller gave findings as to whether the denial of title by the petitioners herein is *bona fide* or not and that unless a finding is recorded by a Rent Controller or appellate authority that the denial is *bona fide*, a civil suit for declaration of title is not maintainable and that any finding given by the civil Court without determination by the Rent Controller or the appellate authority under the Act that the denial of title is *bona fide* does not operate as *res judicata*.

iii) In **B. Narsing Rao v. Parvathi Bai**^[3] it is held as follows: -
'What is therefore manifest from the aforesaid discussion is that in the case of a person who answers the description of a tenant, the relief for eviction of such a person in a civil Court can be sought for only after the Rent Controller records a finding in a proceeding initiated under Section 10(1) of the Act where the tenant denies the title that denial was *bona fide*. Only then, not till then, the question of landlord being entitled to sue for eviction of the tenant in a civil Court arises.' Placing reliance on this decision, it is contended that the respondents herein are not entitled to seek eviction of the petitioners in a civil court unless the condition precedent contemplated under the *proviso* appended to Section 10(1) of the Act is found fulfilled.

iv) **N. Ramachandra Rao v. Vasanta Rao**^[4]. In this decision, this Court followed the decision in Narsinga Rao (supra) and held as follows:
- **'..Proviso to Sec.10(1) of the Act postulates that there must be a relationship of landlord and tenant, there must be a denial of that relationship or of title of the landlord and that denial is *bona fide* and the Rent Controller has to record these findings. On recording such findings only, the civil court gets jurisdiction to grant a decree not only of declaration of title, but also consequential decree for possession. In this case such is not the situation. Under these circumstances, I do not**

find any error of law committed by the appellate Court.'

8. On the contrary, the learned counsel for the respondents/landlords would submit that the *proviso* to sub section (1) of Section 10 of the Act does not take away the jurisdiction of the civil Court to settle the dispute in regard to the question of title between the landlord and tenant and, therefore, the issue of settling the dispute in regard to question of title is well within the competence of the civil Court.

9. In **JJ Lal (P) Ltd., v. M.R. Murali [(2002) SCR 919]** while interpreting the provisions of Section 10(2)(7) and 10(1) second *proviso* of T.N Buildings (Lease, Rent and Eviction) Control, Act, 1960 which are analogous to the *proviso* to sub section (1) Section 10 of the Act vis-à-vis jurisdiction of the civil Court, the Supreme Court held as follows:

Eviction may be sought by the landlord on the singular ground of the tenant having denied the title of the landlord or coupled with other grounds. In such an application it is the Controller who will decide whether such denial or claim was bona fide or not. If the finding of the Controller is that the denial or claim by tenant was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the building. However, if the Controller does not find the denial or claim to be not bona fide he shall deny the landlord's claim for eviction by making an order rejecting the application. Such finding and rejection of landlord's application would not debar the landlord from approaching the Civil Court for establishing his title. By having regard to second proviso to Sub-section (1) of Section 10 of the Act, the bar on the jurisdiction of Civil Court stands lifted and the landlord becomes entitled to sue for eviction of the tenant in a Civil Court enabling such Civil Court to pass a decree for eviction on any of the ground on which the Controller would have directed eviction under Sections 10 14 or 16, notwithstanding the opinion formed by the Civil Court whether the denial of title by the tenant had entailed forfeiture of the lease and notwithstanding the finding of the Civil Court that the claim of permanent tenancy was unfounded. This is how any conflict of jurisdiction between Civil Court and Controller can be avoided by construing Section 10(2)(vii) and Section 10(1) second proviso homogenously and as part of one scheme. The legislative intent appears to be that denial of title can be decided by the Controller for the limited purpose of finding out whether a ground of eviction is made out but the questions of title should be left to be determined by the Civil Court. Once a question of title has arisen between a landlord and a tenant and such dispute is bona fide, the doors of Civil Court are left open to the landlord and therein adjudication on grounds of eviction otherwise within the domain of Controller, is also permitted so as to avoid multiplicity of suits and proceedings. All the disputes between landlord and tenant would be settled in one forum and the need for prosecuting two separate proceedings before two fora would be eliminated.

Eventually the Supreme Court held that to avoid multiplicity of litigation the jurisdiction of civil court to decide the dispute relating to title between the landlord and tenant cannot be taken away.

10. In view of the precedential guidance it is no longer open for the revision petitioners to contend that without approaching the Rent Controller the respondents cannot directly approach the civil Court for the relief of declaration of title in respect of the schedule property.

11. Viewed thus, this Court finds that the contentions raised on behalf of the revision petitioners that the findings in the civil proceedings under exhibits P1 and P2 are not binding on them and that the said findings do not operate as *res judicata* are devoid of merit. The said contentions are accordingly rejected. Therefore, it can now finally be concluded that the findings of the civil court have become final and binding on the parties and that it is not open to the revision petitioners to contend that without a finding recorded by a Rent Controller to the effect that the denial of title of the landlord by the tenant is bonafide, the respondents cannot approach a civil Court and obtain a decree for declaration of title and that the decree of the civil Court is not binding upon them. Be it reiterated for emphasis that in the civil proceeding the first appellate court while allowing the appeal of the respondents had declared their title in respect of the plaint schedule property but refused to grant the relief of eviction on the ground that the tenancy of the revision petitioners is governed by the provisions of the Act and therefore, the respondents had filed the present eviction petition against the revision petitioners pursuant to the findings in the decree and judgment of the civil Court which have become final and binding on the parties on the dismissal of the second appeal in SA.no.269/2001 by this Court.

12. Coming to the grounds of eviction, the case of the landlords/respondents as is translated into the evidence of PW1 is that the revision petitioners have committed wilful default in payment of rents from 01.01.1983. Admittedly, since the tenancy is not admitted and the title is denied, the rents are not paid by the petitioners herein to the respondents or

their predecessor-in-interest from the date the disputes have arisen. Since a competent civil Court had already declared the title of the respondents and the said finding is confirmed in the second appeal and has become final and as the revision petitioners could not prove payment of rents during the disputed period, it can safely be concluded that the respondents herein had sufficiently established that the revision petitioners had committed wilful default in payment of rents. Once the jural relationship is held established, it follows that the failure to pay rents by the revision petitioners shall be treated as a wilful default.

13. Coming to the contention that the respondents herein are entitled to seek eviction on the ground that the revision petitioners ceased to occupy the petition schedule property, the fact remains that PW1 during the cross examination had stated that the petitioners herein are still in possession of the schedule premises. The pleaded case of the respondents herein is that the revision petitioners have sublet the premises and that they have ceased to occupy the same. Therefore, when the evidence brought on record is examined harmoniously, it is possible to accept the contention that the revision petitioners have unauthorisedly sublet the premises to Md.Sarvar Saheb and that they had ceased to occupy the schedule premises and that, therefore, the respondents herein are entitled to seek eviction on that ground also as rightly held by the learned appellate authority.

14. Viewed thus, this Court finds that there is no merit in the revision and that the revision is liable to be dismissed confirming the orders of the learned appellate authority in RA.no.23 of 2012.

15. In the result, the Civil Revision Petition is dismissed confirming the orders of the Court below in RA.no.23 of 2012. The revision petitioners are granted a time of four (04) months from the date of the receipt of a copy of this order for vacating and handing over vacant peaceful possession of the schedule property to the respondents. Failing compliance the respondents/landlords are at liberty to seek eviction and recover vacant possession of the petition schedule property from the revision petitioners by

following the procedure established by law.

There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

1st June, 2016
Vjl

[\[1\]](#) (1991) 1 SCC 494

[\[2\]](#) 1993(1) ALT 451

[\[3\]](#) 1978 AWR 127

[\[4\]](#) APLJ 1985(2) 136