

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.3367 AND 3280 OF 2015

COMMON ORDER:

The defendants (tenants) in O.S No.61 of 2008 are the revision petitioners herein, impugning the order and decretal order passed in I.A. No.360 of 2008, for appointment of interim receiver or an Advocate Commissioner to take possession of the lease hold property consisting of 1 + 2 floors with total plinth area of 3972 Sq.ft viz., 900 Sq.ft of ground floor, 1536 Sq.ft each of 1st floor and 2nd floor respectively, to collect rents and to protect the structures and manage the same till disposal of the suit and another I.A No.361 of 2008 was pursuant to lease documents Ex.P8 (Ex.B1 in the suit) dated 28.02.2008 vide document No.672 of 2008 at prevailing rent of Rs.7,550/- per month pending disposal of the suit.

2) After contest by the respondents—tenants in the two applications (supra) the learned Senior Civil Judge, Chodavaram allowed the same vide separate orders dated 31.07.2015, in I.A. No.360 of 2008 by appointing Sri Ch.Krishna Murthy, advocate, as receiver with a direction to take possession of the schedule property supra within one month from the date of receipt of the order supra and to collect rents, which are due by the respondents to petitioner as per orders passed in I.A. No.361 of 2008 and further directed to deposit the said rents before the Court every month without fail until further orders and the fee of the receiver was fixed at Rs.1,000/- per month payable by the petitioner, from out of said rents to be deposited. Further, the order passed in I.A No.361 of 2008 is directing the respondents to deposit the rent of Rs.7,550/- per month from June, 2008, and subsequent rents which are due by the respondents, within one month from the date of disposal of that petition. Impugning the said two orders, the two revisions are maintained.

3) The contentions in the grounds of revision are that the revision petitioners, who are defendants to the suit under Ex.R1—registered sale deed dated 14.07.2008 purchased the property in favour of 1st defendant from the daughter-in-law of the plaintiff, which is nearly five months after the execution of the said registered lease deed dated 28.02.2008 for five years. It is further submitted that the trial Court must have taken into consideration the factum of lease is terminated by virtue of the sale and there is no land lord—tenant relationship subsisting after the sale deed and the revision petitioners, who are defendants herein, are in possession of the property though originally taken under lease in February, 2008, from the plaintiff by virtue of the sale deed from the original owner, who is no other than daughter- in-law of the plaintiff, so-called landlord of registered lessee, who has no title, cannot maintain the suit for eviction, cannot seek for appointment of receiver or payment of any amounts much less for use and occupation month to month, leave about any further rents as per lease deed dated 28.02.2008, which reads as only Rs.9,000/- per annum for the Court order of Rs.7,550/- per month with arrears from June, 2008 i.e., the date and month in which I.A. Nos.360 of 2008 and 361 of 2008 are filed.

4) The further contention of the revision petitioners is that from the order of the receiver though inadvertently mentioned as if to take possession only directs the receiver to collect rents from the defendants payable to the petitioner after deducting Rs.1,000/- towards receiver charges. Once such is the direction, the question of vacating the petitioners and taking possession of the premises by the receiver does not arise, thereby it is misconceived order and the orders are liable to be set-aside.

5) Whereas it is the contention of the learned counsel for the revision petitioners in both the revisions that so far as I.A. No.361 of

2008 covered by C.R.P. No.3367 of 2015, there is an interim order obtained by the revision petitioners/ defendants on 11.09.2015 from this Court (another bench) staying all further proceedings in I.A. No.361 of 2008 in O.S. No.61 of 2008 subject to condition that the revision petitioners deposit Rs.4,50,000/- to the credit of the suit within four weeks from that day and further on condition that the petitioners continue to deposit Rs.7,550/- per month from 01.10.2015 onwards. Despite the condition imposed in the revision, it was not complied with and even extension application filed in C.R.P. M.P. No.5801 of 2015 to extend the time for deposit for further eight weeks fixed in C.R.P.M.P. No.4513 of 2015, which was also expired long back and there is no compliance of depositing of any amount much less subsisting amount of arrears out of Rs.4,50,000/- made, thereby on the threshold the revision requires dismissal with no further extension of time much less to confer any further concession to the revision petitioners.

6) The other contention is against the order of receiver, by virtue of provisions under Order XLIII C.P.C an efficacious alternative remedy of appeal is maintainable. Once such is the case, the revision filed including under Article 227 of Constitution of India or strictly Section 115 C.P.C has no application for no final admission of the lis pursuant to the order, is misconceived and liable to be dismissed for not a case of exceptional circumstances existed like any violation of principles of natural justice apart from the factum not in dispute of subsequent to the revision in C.R.P. No.3280 of 2015, within the statutory time provided, the appeal already filed before the District Court Visakhapatnam.

7) Heard and perused the material on record. This Court, from request of both sides, has taken up both the matters for common hearing and disposal.

8) Once the concession given and the order is not complied

with and what the order passed by the lower Court is to pay Rs.7,550/- per month for use and occupation though order inadvertently mentioned as if rent which does not arise in a eviction suit, however by efflux of statutory time of five years directly covered by Ex.A8—registered lease dated 28.02.2008, no quit notice is even required under Section 106 of Transfer of Property Act apart from notice given before filing suit and after reply, the suit is filed after efflux of time the tenancy is only month to month, if at all as tenant holding over the claim from combined reading of Section 111 of Transfer of Property Act. Once the landlord filed eviction petition seeking eviction is not even tenancy holding over but for tenant by sufferance. No doubt, it is the claim of the defendants referring to Ex.R1—registered sale deed of July, 2008 that the plaint schedule property was purchased from the daughter-in-law of the plaintiff. However, the fact remains, leave about Ex.P9, even from Ex.P8 there is a registered lease deed executed by revision petitioners/ defendants 1 and 2 in favour of the plaintiff. Once they entered into lease, even the plaintiff has claimed with no title and they are estopped from denying title much less to dispute the tenancy, more particularly from the wording of Section 116 of Evidence Act by virtue of estoppel they have no right to deny. Unless the tenancy taken by virtue of Ex.P8—lease is terminated by the parties even after quit notice for not served, the question of claiming right of possession pursuant to the sale deed under Ex.R1 does not arise practically. This observation, however, no way prejudice the rights of the defendants including for any claim pursuant to the sale deed. The fact remains even there from that, question of appointing receiver, pending eviction suit against the erstwhile tenant admittedly even after efflux of time continuing either as tenant holding over or even as tenant by sufferance, does not arise for not a case of he is intentionally causing any acts of waste and damage to the property or the property is in eminent danger or damage to protect. Thus, in the absence of existence of any such circumstances and the

hardship, the remedy of seeking appointment of receiver could not be available even before the trial court. No doubt, the trial Court inadvertently mentioned to take possession which does not arise when there is a direction to collect the rents or damages for use and occupation from the defendants and to pay to the plaintiff. Once it is collection of rents or damages for use and occupation charges, unless the defendants are allowed to continue in possession, the payment does not arise. Once such is the case, taking possession does not arise. Thereby the order of appointing receiver is per se unsustainable and liable to set aside.

9) No doubt, there is an efficacious remedy of appeal and subsequent to the C.R.P. No.3280 of 2015 the appeal is maintained by virtue of the order. However, the appeal became infructuous for all purposes as the appellate Court cannot sit again against the revision order to decide the appeal but for closing the same by recording by virtue of the direction herein, as fortified by the Division Bench expression of this Court in **P.Madhusudhan Rao vs Lt. Col. Ravi Mannan**^[1]. It is needless to say, even though there is an appeal remedy against the order, the plenary jurisdiction under Article 227 of the Constitution of India can be exercised as an exceptional case as per above expression against any illegal or improper exercise jurisdiction or very order is per se unsustainable and outcome of non-application of judicial mind.

10) Having regard to the above, so far as C.R.P. No.3367 of 2015 concerned for non-compliance of the interim order no further orders are required and it is accordingly dismissed. So far as C.R.P. No.3280 of 2015 concerned, the same is allowed. It is made clear that allowing of the C.R.P No.3280 of 2015 and dismissing of C.R.P. No.3367 of 2015 no way prejudice the rights of the parties to the main lis. It is further made clear pursuant to the said appointment of

receiver, any possession either constructively or physically taken and put under lock and key, the Commissioner is bound to open the locks and allow possession of the defendants to continue pending disposal of the suit. However, it does not absolve the liability of the defendants to pay the use and occupation charges pending disposal of the suit pursuant to the order passed in I.A. No.361 of 2008, failing which the options open are to seek for struck off defence or to execute and recover. No order as to costs.

11) Consequently, miscellaneous petitions, if any pending in these revisions shall stand closed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.21.07.2016
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