

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3384 of 2015

ORDER:

Impugning the reversal of the eviction order of the Rent Controller dated 10.09.2012 in R.C.C.No.7 of 2000, by the lower appellate Court-cum-Principal Senior Civil Judge at Anakapalle, in R.C.A.No.01 of 2012 dated 28.11.2014, the landlord maintained the present revision.

Heard both sides at length.

From the evidence placed on record vide Exs.A1 to A5 and Exs.X1 to X8 vis-à-vis that of PWs.1 to 3 and RWs.1 to 3, the Rent Controller passed the eviction order. From the evidence supra, PW.1 is claiming as landlord of the premises sought for eviction of RW.1-so called tenant and the tenancy itself is in dispute by respondent RW-1. Ex.A1 is the lease deed dated 08.12.1995 said to have been executed by the respondent-tenant in favour of the petitioner-landlord. PWs.2 and 3 are the attestors of the Ex.A1 supra. Ex.A2 is the legal notice dated 18.07.2000 with Ex.A3-acknowledgment and Ex.A5 is the reply notice. Ex.A4 is the certified copy of registered will dated 22.05.1994. RW.1 cause examined RW.2 the alleged real owner of the property under alleged registered gift deed dated 27.03.1999 copy of it marked as Ex.X1 and RW.3 alleged present tenant of the premises under RW.2. The evidence of RWs.1 to 3 in saying RW.1 vacated the premises and handed over to RW.2 and RW.2 passed the receipts for the rent paid by RW.1 earlier vide Exs.X2 to X4 besides bearing electrical charges by RW.2 as alleged owner pursuant to the gift and in alleging that RW.2 let out the property to RW.3. It is to say there is clear case of wilful denial of the alleged title of the landlord by the tenant, once the Ex.A1 lease deed is proved, then from operation of Section 116 of the Evidence Act against the tenant. This is one of the grounds even there is no pleading in the petition once that evidence is

let in by the tenant it can fall for consideration by the Court from the settled law of even no plea where evidence is let in from the understanding of the parties to the lis on this aspect also. Leave it as it is, once Ex.X1 is the certified copy of the registered gift deed even it is in dispute for no way admitted, there must be a foundation for letting any secondary evidence leave apart for no objection raised, no objection later can be raised on that procedural aspect once marked is as good as original also from the settled law, but for to say when the very alleged gift and getting of title by RW.2 is in dispute by plaintiff/petitioner, proof is required by examination of at least one of the attestors as contemplated by Section 68 of the Evidence Act vis-à-vis in the case of any of the attestors not alive or not within the reach of the process of the Court, to follow what is contemplated by Sections 69 to 71 read with 47 and 67 of the Evidence Act. Needless to say even Ex.X1 is even a certified copy of a registered document within the meaning of Sections 74 read with 77 of the Evidence Act for mere admissibility from any relevancy to be considered by the Court under Section 136 of the Evidence Act, it no way exempts the proof contemplated by law of this compulsory attestable document. Even the appellate Court for the evidence not borne by record of the Rent Controller, introduced new facts particularly in Paras 21 and 22 which are practically borrowed from a pending suit from O.S.No.10 of 2004 between the petitioner and respondent for which the appellate Court has no right at all but for to appreciate from the entire evidence let in and placed on record only, that too while sitting against the judgment of the trial Court, irrespective of the entire matter at large and can re-appreciate the evidence afresh as a final fact finding first appellate authority. If at all the appellate Court wants to dispose of by considering the material of O.S.No.10 of 2004 also, it should have been heard the parties to club the Rent Control Appeal with the suit for common disposal to read the evidence of one matter is of the other. Having not done so, the appellate Court's order therefrom is

unsustainable and on that ground itself is liable to be set aside and in view of the fact that lis from the title dispute requires adjudication also from the suit O.S.No.10 of 2004 is pending inter se between the parties litigating in relation to property covered by the lease deed and the gift deed supra (Exs.A1 and X1 herein), it is to sub serve the ends of justice and to avoid conflicting findings by separate disposal, to decide the appeal along with the suit.

Accordingly and in the result, this Court from hearing both sides and to sub serve the ends of justice, allowed the revision while setting aside the appellate Court's judgment and decree remands the matter with a direction to the lower appellate Court to decide afresh along with the suit O.S.No.10 of 2004 stated pending on the file of one of the Additional Senior Civil Judge's Court, the same is by this order withdrawn and transferred to the Principal Senior Civil Judge, Anakapalle, which got jurisdiction to decide the Rent Control Appeal, whether by the Regular Officer or In-charge Officer as the case may be and uninfluenced by either of the observations in R.C.A.No.1 of 2012 made by it or by the observations if any made herein, but for on own merits. Needless to say the Court shall make every endeavour as the suit is of the year 2004 to dispose of both the matters for common judgment by clubbing the R.C.A.No.1 of 2012 with O.S.No.10 of 2004 and preferably within four months from the date of receipt of this order no doubt by permitting any further evidence of the parties. Both the parties are given liberty to approach the lower Court by virtue of this remand order if at all there is any stay of execution of the Rent Controller matter pending disposal of the matters to consider on own merits.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 24.08.2016
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