

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.5028 OF 2009

ORDER:

The revision petitioners herein, who are respondents in the Rent Control petition, challenging the judgment dated 02.09.2009 in R.A. No.143 of 2008 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad (for short, 'Appellate Court'), whereby and whereunder, the Appellate Court while reversing the order dated 30.07.2008 passed in R.C. No.170 of 2006 on the file of the

I Additional Rent Controller, Hyderabad (for short, 'Rent Controller'), directed them (revision petitioners) to vacate and hand over the vacant possession of the schedule premises within two months from the date of passing of the said order, preferred the present civil revision petition under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act') seeking to set aside the judgment passed by the Appellate Court.

2. The revision petitioners, who are the tenants of the schedule premises, are the respondents, while the respondents herein, who are the owners of the schedule premises, are the petitioners before the Rent Controller.

3. For the sake of convenience, the parties

hereinafter referred to as they were arrayed before the Rent Controller in the Rent Control petition.

4. The basic facts needed for disposal of the present revision petition are that the petitioners filed R.C. No.170 of 2006 before the Rent Controller under Sections 10(2)(i) and 10(3)(a)(i)(a) of the Act agitating two grounds. The first is willful default in payment of rents by the respondents; and the second for bona fide requirement. The source of title projected by the petitioners was that the husband of petitioner No.1, by name Balkishan Toshniwal, incidentally, the father of petitioner Nos.2 and 3, purchased the schedule premises under a registered sale deed dated 17.04.1964 marked as Ex.P.3 from one Vajramma, who is no other than the second wife of Yellaiah, who is no other than the husband of respondent No.1. Subsequent thereto, on 21.04.1975, a rental deed was entered into on a monthly rent of Rs.90/-, which, of course, was not a registered one. Thereafter, pleading that the respondents failed to pay the rent from the month of January, 2005 to March, 2006 and also on the ground of bona fide requirement, sought eviction of the respondents.

5. By the date of filing the petition before the Rent Controller, admittedly, the said Yellaiah, who was the lessee, was no more and it has been the reason respondent Nos.1 and 2 are arrayed, who are in

possession of the schedule premises.

6. The request was resisted by the respondents denying execution of the rental deed and even acquiring the title by the petitioners through the husband of petitioner No.1 under Ex.P.3 setting up the plea that both the documents, i.e., Exs.P.1 and P.3, are fabricated and brought into existence for the purpose of the present relief. On the other hand, they also pleaded that they have inherited the schedule premises and there is no jural relationship of the landlord and tenant between them and filed documents, which are in the form of electricity bills, tax receipts and the bills for consumption of water, to substantiate their stand.

7. Before the Rent Controller, petitioner No.1 examined herself as P.W.1. Of course, no other witnesses were examined on behalf of the petitioners, but however, Exs.P.1 to P.20 were marked. Whereas, on behalf of the respondents, respondent No.2 stepped into box and examined as R.W.1 and marked Exs.R.1 to R.73.

8. The Rent Controller, having formulated three points mentioned in paragraph No.5 of its order, recorded findings against the petitioners holding that no notice was served upon the respondents for their failure to pay rents from January, 2005 onwards to March, 2006, and thereby, held that the petitioners failed to establish the existing jural relationship between them and the respondents. The

Rent Controller also, referring to the provisions of Section 90 of the Indian Evidence Act, 1872, still, adverted to the aspect of the jural relationship and even holding that none is examined to prove the due attestation so far as Ex.P.1 is concerned, negatived the stand of the petitioners. Thus, dismissed the petition.

9. Aggrieved by which, R.A. No.143 of 2008 came to be filed before the Appellate Court.

10. The learned Appellate Court formulated three points, basing on the grounds of appeal and also the order of the learned Rent Controller challenged before it, thus:

“(1) Whether there is any pre-existing jural relationship between the petitioners and respondents as landlords and tenants, if so, the denial of the title of the petitioners by the respondents is bona fide or not?

(2) Whether the respondents committed default in payment of rents from January 2005 to March 2006 @ Rs.90/- p.m. does it amounts to willful default, if so, the respondents are liable to be evicted from the petition schedule premises?

(3) Whether the petitioners requires the petition schedule premises for self-occupation after demolition and reconstruction is a bona fide or not, if so, what relief?”

11. The learned Appellate Court, having analyzed the evidence on record, more particularly, Ex.P.1,

construing it as 30 years old document and drawing presumption embedded in Section 90 of the Indian Evidence Act, 1872, as it came from proper custody as required under the provisions of Section 90, held that the onus shifts to the respondents to disprove the contents therein. In that direction, the learned Appellate Court appraised the evidence of R.W.1, more particularly, the answers given in the cross-examination and basing on the circumstance that the gift settlement deed said to have executed by respondent No.1 in favour of respondent No.2 since refers to the sale deed marked as Ex.P.3 therein and observing that no documentary proof is filed by the respondents either to disprove the ownership of the petitioners or to substantiate their ownership and also observing that once the ownership of Vajramma is not disputed by the respondents, which incidentally, finds place in the gift settlement deed, it would clinchingly establish that the husband of respondent No.1 Yellaiah was only a tenant, but not the owner of the property and, thereby, rejected the stand of the respondents, holding point No.1 in favour of the petitioners. The learned Appellate Court, observing that the issue of notice for default of payment of rents is not mandatory placing reliance on the decision of this Court in **Mohan Lal v. Shajjaia Sultana**^[1], held point No.2 also in favour of the petitioners recording that the respondents are bound to vacate the petition schedule premises. Even on bona fide

requirement, the plea put forth by the petitioners on point No.3, acceded to the stand taken by the petitioners, thereby, allowed the appeal setting aside the order of dismissal passed by the Rent Controller and granted two months time to the respondents to vacate the premises and hand over the vacant possession to the petitioners.

12. Aggrieved by the same, the present revision is filed contending in the grounds that the Appellate Court, somehow, overlooked the fact that the petitioners failed to prove the jural relationship of landlord and tenant.

13. It is stated that the petitioners did not take any steps to prove that Ex.P.1 was executed by late Yellaiah except the plea put forth by them. It is incidentally stated that the Appellate Court failed to take note that no description of the schedule premises was mentioned in the rent control petition. For the said reasons, they sought to set aside the judgment and decree passed by the Appellate Court.

14. Heard Sri C. Bala Gopal, learned counsel for the revision petitioners, and Sri Muralinarayan Bung, learned counsel for respondents herein.

15. Perused the order passed by the Rent Controller and the reversal judgment passed by the Appellate Court and the evidence on record. The presumption drawn by the Appellate Court basing on the

provisions of Section 90 of the Indian Evidence Act, 1872, concerning the rental deed Ex.P.1, since based on reasoning and on proper appreciation of evidence on record as Ex.P.1 is coming from proper custody, certainly, cannot be up set.

16. Turning to the source of title of the petitioners, Ex.P.3 is a registered sale deed executed by one Vajramma, who is no other than the second wife of Ellaiah and the said Ellaiah is a party to Ex.P.1, rental deed. Thus, this circumstance is sufficient enough to prove the authenticity of the contents of Ex.P.3. This apart, there is yet another circumstance that can be culled out from the contents of gift settlement deed, which is of the year 2000, said to have executed by respondent No.1 in favour of respondent No.2 and was received by the appellate Court as additional evidence, but, somehow, exhibit number was not given to it. In the said gift settlement deed, there is reference to the sale deed under Ex.P.3 showing its date. No other document is filed by the respondents but they intend to take advantage of Ex.P.3's date to give an impression that respondent No.1 did derive title to the subject property, though, in fact, the said sale deed has got reference to Ex.P.3 alone. Thus, authenticity of Ex.P.3 is proved through the contents of the gift settlement deed. Even this particular aspect has been examined by the appellate Court and tendered a definite finding in paragraph No.13 of the judgment under

challenge. Therefore, certainly, contents of the gift settlement deed will not have the effect of setting the rights derived by the petitioner under Ex.P.3 at naught. Thus, it is to be observed that the respondents have not substantiated their title by filing any document through which they derived title, more particularly, respondent No.1, who executed the gift settlement deed in favour of respondent No.2.

17. This apart, there is yet another circumstance which the Appellate Court has adverted to, which can be culled out from the answers given by R.W.1 in her cross-examination. She is absolutely unaware whether compensation was paid for part of the property, which was acquired by the Town Municipality and further answers given by her in her cross-examination would condemn her stand, which need not be gone into elaborately. Thus, viewed from any angle, there is absolutely no merit in the instant revision petition.

18. Hence, the instant civil revision petition is dismissed. There shall be no order as to costs.

19. Learned counsel for the revision petitioners makes a request to grant three months time for vacating the schedule premises. Admittedly, no rents have been paid from the date of petition and even earlier thereto. Be that as it may, subject to payment of rents from the date of

petition before the Rent Controller within two months from today, the period of three months sought for by the learned counsel for the revision petitioners is granted.

20. As a sequel thereto, miscellaneous applications, if any pending in the instant civil revision petition, stand closed.

A. SHANKAR NARAYANA, J

2nd August, 2016

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