

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5253 of 2010

ORDER :

This Civil Revision Petition is filed challenging the order dt.02.08.2010 in E.A.No.27 of 2006 in E.P.No.25 of 2005 in R.C.No.107 of 2001 passed by the Additional Rent Controller, City Civil Court, Secunderabad.

2. The 1st respondent filed R.C.No.107 of 2001 before the said Court for eviction of 2nd respondent, which was dismissed on 06.05.2003.

3. Aggrieved thereby, the 1st respondent filed R.A.No.181 of 2003 before the Additional Chief Judge, City Small Causes Court, Hyderabad. The said R.A. was allowed on 22.10.2005, and the eviction of 2nd respondent was ordered.

4. The 2nd respondent then filed CRP.No.6285 of 2005 before this Court. The said Revision was dismissed.

5. In the said Revision, six (06) months' time was granted to 2nd respondent to vacate the R.C. Schedule property.

6. Thereafter, the 1st respondent filed E.P.No.25 of 2005 for execution of the decree for eviction granted in his favour.

7. The petitioner herein is the son of 2nd respondent. He filed E.A.No.27 of 2006 contending that he and 2nd respondent were joint tenants of 1st respondent and were jointly paying the monthly rent of Rs.300/- to 1st respondent. He contended that he got married and has three children, and to make a living he used to go out-of-station for sometime for job works by reposing full faith and confidence in 2nd respondent. He pleaded that 2nd respondent informed that 1st respondent had agreed to sell the suit schedule property to her for Rs.1 lakh and believing the same he paid Rs.50,000/- to 2nd respondent so as to contribute 50% of the sale consideration to 1st respondent and he was hoping that 2nd respondent would pay balance consideration and obtain a registered sale deed. He contended that 2nd respondent developed adverse interest against him because of certain events which occurred after his marriage; and that she colluded with 1st respondent and got filed the main R.C. to bring him on the road. He contended that the order passed against the 2nd respondent in the Rent Control proceedings does not bind him since he is not a party thereto, although he was a joint tenant.

8. The 1st respondent filed a counter-affidavit

denying the allegation of petitioner that he was a tenant and denied that he was also not a joint tenant along with 2nd respondent. He relied on the deposition of 2nd respondent in R.C.No.107 of 2001 to the effect that she is the tenant of the R.C. Schedule property and paying rents to 1st respondent. He denied that he collected rents from 2nd respondent also and stated that petitioner never paid any rent to him. He also denied that he agreed to sell the petition schedule property for Rs.1 lakh to 2nd respondent. He pleaded that petitioner is well aware of the Rent Control proceedings, the appeal therein as well as the order passed by this Court in the Revision against 2nd respondent. He denied that there is any collusion with 2nd respondent and claimed that he was not aware that petitioner paid Rs.50,000/- to his mother for payment to him for purchase of the R.C. Schedule property. He stated that he did not receive any amount either from petitioner or 2nd respondent towards purchase of the R.C. Schedule property. He contended that 2nd respondent defaulted in payment of rents, and that was why he filed R.C.No.107 of 2001 against her. He denied that he received any advance towards sale of the R.C. Schedule property. He categorically asserted that petitioner and 2nd respondent are living under one roof and are living jointly and that the E.A. had been filed by petitioner in collusion

with 2nd respondent, who is his mother.

9. Before the Trial Court the petitioner examined PWs.1 to 3 and marked Ex.P.1, while the 1st respondent examined himself as R.W.1.

10. By order dt.02.08.2010, the Court below dismissed E.A.No.27 of 2006. It observed that petitioner did not file any document to show that he is a tenant of 1st respondent and that he had paid any portion of the rent along with 2nd respondent to 1st respondent. It held that there is nothing to show that petitioner was in possession of R.C. Schedule premises on his own account and not as a sub-tenant, and therefore, he is not entitled to resist the execution. Although petitioner relied on sale deed dt.08.08.2008 (Ex.P.1) executed by I Junior Civil Judge, City Civil Court, Hyderabad in favour of 2nd respondent in respect of R.C. Schedule property in a suit allegedly filed by 2nd respondent against 1st respondent, the Court below observed that the address of 1st respondent shown in the E.A. did not tally with the address shown in the sale deed, and it appears that intentionally wrong address of 1st respondent was given in the suit and decree was obtained by her against 1st respondent fraudulently.

11. Challenging the same, the present Revision is filed.

12. Heard Sri Mohammed Imran Khan, counsel for petitioner; and Sri R. Mahati Chandrashekar Reddy, counsel for 1st respondent.

13. From the facts narrated above, as well as those appearing from the depositions of witnesses in the Court below, there is no dispute that petitioner is the son of 2nd respondent. There is also no dispute that petitioner was living along with 2nd respondent in the premises belonging to 1st respondent, in respect of which the 1st respondent had instituted R.C.No.107 of 2001 and succeeded in obtaining the order of eviction in R.A.No.181 of 2003 on 22.10.2005, which was confirmed in CRP.No.6285 of 2005 by this Court.

14. Although the counsel for petitioner contended that in view of the sale deed dt.08.08.2008 obtained by 2nd respondent from 1st respondent, the 1st respondent ceased to be owner of R.C. Schedule property and cannot pursue the eviction proceedings in the execution, there is no dispute that this sale transaction is not referred to in the claim petition filed by petitioner, and it only refers to an agreement allegedly entered into by 2nd respondent with 1st respondent which the 1st respondent has categorically denied. Without a pleading about the sale transaction in the E.A., the sale deed cannot be taken into account. That apart, it is undisputed that the address shown as that

of 1st respondent in the sale deed is different from the address indicated by petitioner in the E.A. Therefore, there is a serious doubt as to whether the 1st respondent had any knowledge about the suit filed by 2nd respondent against him at all, and it appears that intentionally wrong address of 1st respondent was given in the suit and fraudulently a decree was obtained by 2nd respondent against 1st respondent.

15. As rightly held by the Court below, the petitioner did not prove that he was also a joint tenant along with his mother since there is no evidence adduced by him about the payment of rent by him separately to 1st respondent.

16. PW.3 clearly stated that it was 2nd respondent who was paying rents to 1st respondent and contradicted the petitioner's claim that he was also jointly paying rents along with his mother to 1st respondent. In the absence of any evidence to show that petitioner was a joint tenant, it has to be presumed that he is only living with his mother who was in fact the tenant of R.C. Schedule property. The 2nd respondent admittedly remained *ex parte* and did not either file any pleading or give evidence to support the plea taken by petitioner. Therefore, the question whether petitioner had paid Rs.50,000/- to 2nd respondent or not for purchase of the R.C. Schedule property also is not

proved.

17. In this view of the matter, I am of the opinion that the plea of petitioner is not at all *bona fide*, and that he is not in possession of the R.C. Schedule property on his own account or as a joint tenant along with the 2nd respondent, and he is not entitled to resist execution of the decree obtained by 1st respondent against him.

18. In spite of the fact that this Court had granted six (06) month's time to 2nd respondent to vacate the R.C. Schedule property in 2005, till date, because of the E.A.No.27 of 2006 filed by petitioner obviously in collusion with 2nd respondent, the proceedings for eviction have got delayed.

19. Therefore, the Civil Revision Petition is dismissed with costs of Rs.5,000/- to be paid by petitioner to 1st respondent and petitioner is granted two (02) weeks' time from the date of receipt of a copy of this order to vacate the R.C. Schedule property. He shall also deposit any arrears of rent payable by petitioner and 2nd respondent to 1st respondent within this period.

20. As a sequel, miscellaneous petitions pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-02-2016

Ndr/*