

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4285 of 2016

ORDER:

1) Assailing the order dated 27.07.2016 passed in R.C.C.(SR) No.5486 of 2016 on the file of the Principal Junior Civil Judge, Madanapalle, wherein it was held that R.C.C. filed for claiming arrears of rent is not maintainable, the present revision is filed.

2) The facts in issue are as under:

3) The mother of the petitioner herein executed a gift deed dated 20.05.2013, pursuant to which the petitioner claims to have become an absolute owner of the schedule property. In view of the above, there developed a relationship as landlord and tenant between the parties as such she filed R.C.C. claiming arrears of rents from March, 2011 to June, 2016.

4) A perusal of the material placed before the Court would show that through gift settlement deed, the petitioner is said to have become an owner of the property. Previously, the respondent herein filed R.C.C.No.3 of 1985 and the mother of the petitioner filed R.C.C.No.12 of 1983. Both the cases were tried and disposed of directing the respondent to pay Rs.250/- per month and to vacate the premises within two months. Against the said order, C.M.A.Nos.2 of 1990 and 3 of 1990 came to be filed before the Subordinate Judge, who vide its common order dated 28.06.1993 dismissed the appeals filed by the respondent and directed him to vacate the premises and to pay Rs.500/- per month as rent. Thereafter, C.R.P.Nos.2348 of 1993 and 2349 of 1993 came to be filed before this Court. Initially this Court

granted stay of execution of the order for a period of two months on certain terms and conditions. Since the respondent failed to deposit the rents, the mother of the petitioner filed O.E.P.No.6 of 1993 which was allowed and the possession was handed over to the mother. As there were floods during the said period, the entire schedule premises got completely damaged which lead to its demolition. Questioning the orders in O.E.P.No.6 of 1993 the respondent herein filed C.R.P.No.538 of 1994 before this Court. A common order came to be passed in C.R.P.Nos.2348 of 1993, 2349 of 1993 and 538 of 1994 setting aside the eviction orders and holding that the executing court has rightly passed orders as respondent failed to comply with the conditional order of this Court. After allowing the Civil Revision Petitions, the order of eviction was set aside. By that time the building along with first floor washed away. Then E.P.No.2 of 1995 came to be filed by the respondent for taking possession of the premises, but the same was dismissed on 15.12.1995. Against the said orders the respondent filed C.R.P.No.4256 of 1996 which was also dismissed by this Court. Aggrieved by the same, the respondent preferred Civil Appeal No.2287 of 2006 before the Apex Court. By an order dated 20.04.2010 the Apex Court held as under:

“Accordingly, we allow this appeal, set aside the impugned judgment of the High Court and direct that the possession of the land on which the building stood should be restored forthwith to the appellant herein. We further direct the executing court which in this case is the Munsif-cum-rent control authority to assess the value of the building demolished by the respondents herein within eight weeks from today and the respondents are directed to pay the said sum to the appellant-tenant within six weeks thereafter so as to enable the appellant to construct the building thereon and make use of it. No costs.”

5) In view of the orders of the Apex Court, the respondent filed E.P.No.79 of 2010. Pursuant to which the Amin handed over the vacant possession to the respondent on 11.10.2010. The Field Assistant gave a report dated 08.10.2010 estimating the value of the site at Rs.50,000/- . Against which C.R.P.No.4533 of 2012 dated 18.09.2012 came to be filed, wherein the order of the Field Assistant was suspended. The said C.R.P. is still pending. The material shows that the respondent raised construction of two rooms in the schedule premises and is making use of the same since March, 2011. It is alleged that though he is using the rooms, but no rent is paid to the petitioner herein. Hence, the present C.R.P. is filed questioning the rejection of R.C.C. filed for receiving of rents, without even numbering the same.

6) Heard learned counsel for the petitioner.

7) Since the dispute is with regard to the objections raised by the office for numbering the R.C.C., and as no order affecting the rights of the respondents are passed, this Court felt that it may not be necessary to issue notice to the respondents for answering the objections raised by the office.

8) In Civil Appeal No.2287 of 2006, which has been preferred before the Apex Court, it was directed that the possession of land on which the building stood should be restored forthwith to the appellant therein and further the executing court was directed to assess the value of the building, demolished by the respondents therein, within eight weeks from that day and the respondents were directed to pay the said sum to the appellant-tenant within six weeks thereafter so as to enable the appellant to construct the building thereon and make use of it.

9) The material placed before this Court show that there is no dispute with regard to ownership of the property. The present litigation between the parties appears to be with regard to the payment of rent and getting the tenant vacated over above time. In view of the orders passed by the Apex Court and the subsequent E.P., filed for eviction of the respondent herein on the ground that he is altering the property and also violating the terms of the original agreement, the present R.C.C. came to be filed with the following two reliefs:-

- i) Handover vacant physical possession of the petition scheduled premises more fully described in schedule annexed to the petition under Sections 10 (1) (2) (i), 2 (ii(b), 2 (iv) of Andhra Pradesh Buildings (Lease, Rent and Eviction) Act, 1960 as the respondent is a willful defaulter, changed the nature of the tenancy and has denied the title of the petitioner, which is not a bonafide one.
- ii) To direct the respondent to pay all the arrears of rents of Rs.16,000/- from March, 2011 to 30.06.2010 and continue to pay the rents on or before 10<sup>th</sup> of every month, in advance during pendency of the petition or till handing over of the premises to the petitioner.

10) The first prayer appears to be seeking possession of the property since the tenant committed willful default and changed the nature of the tenancy. The second prayer appears to be payment of arrears of rent from March 2011 to 30.06.2016.

11) Whether the petitioner is entitled for the said reliefs or not, is a matter which the Court can enquire and pass orders in accordance with law. But, this court is of the opinion that rejecting the R.C.C.

itself without numbering the same may not be proper. Hence, the trial Court is directed to number the R.C.C. and then proceed in accordance with law.

12) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

30.09.2016

Note: The office is directed to  
Return the original plaint.

B/ o  
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