

THE HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION Nos.2707 and 2809 of 2016

COMMON ORDER:

The instant Civil Revision Petitions are directed against order dated 27-04-2016 in I.A.No.3812 of 2015 in O.S.No.88 of 2015 on the file of the III Additional District Judge, Kurnool.

C.R.P.No.2707 of 2016 is filed by 4th defendant in O.S.No.88 of 2015 questioning the order of III Additional District Judge, Kurnool, directing deposit of 25% of rent to the credit of 1st defendant on or before 5th of every month.

C.R.P.No.2809 of 2016 is filed by defendants 1 and 3 in O.S.No.88 of 2015 for deposit of total amount by 4th defendant.

The parties to these revision petitions are son, mother and daughter.

For convenience, the parties are referred as arrayed in the suit.

N.Sree Vani/plaintiff filed O.S.No.88 of 2015 for partition and separate possession of her 1/5th share in 'A' schedule properties, 2nd item in 'B' schedule property, 'C' schedule property and 1/4th share in 1st item of 'B' schedule property. The 4th defendant is the brother of plaintiff and son of 1st defendant. The 1st defendant is the mother and 3rd defendant is the unmarried sister of plaintiff. Defendants 5 to 7 are in possession as tenants of one of the plaint schedule properties.

Defendants 1 and 3 filed I.A.No.3812 of 2015 to direct defendants 5 to 7 to pay rent to 1st defendant or to deposit the rent to the credit of O.S.No.88 of 2015.

The 1st defendant, being mother, filed the instant application

alleging that she is suffering from heart ailment and due to old age she has to spend sufficient money for sustenance and medical expenses. The rent received was a source of supplement and she was utilizing the money for meeting her medical and incidental expenses. With the filing of the suit, it is alleged that tenants are not paying rents to her and are paying the rent to 4th defendant. As the suit is one for partition, she is entitled to share in the properties including receipts therefrom. Hence, for adhoc arrangement, she has filed the instant application for prayers referred to above.

The 4th defendant opposed the prayer on all fours. The case of 4th defendant is that the 1st defendant/mother is not suffering from heart disease or that she has to spend for her medical expenses. She never had any heart disease. It is further denied that she had been using rent for meeting her medical expenses. It is further denied that with the filing of suit, the tenants viz., defendants 5 to 7 are not paying rents to 1st defendant but are paying to 4th defendant. It is replied that the property from which rent is received was mortgaged in favour of Syndicate Bank, the 4th defendant is discharging the loan amount from out of the rents received from defendants 5 to 7. The 4th defendant has to take care of upkeep of property, pay taxes etc. Therefore, he prayed for dismissal of the application.

The learned trial Judge for disposing of the instant application framed the following point for consideration:-

“Whether the petitioner is entitled to receive the rents from the tenants of the petition schedule properties as prayed for ?”

The trial court, with a view to balancing the opposing claims of mother and sister on one hand, and son on the other, held that if the

entire amount is directed to be paid to 1st defendant, the 4th defendant will suffer and in the alternative if no amount is received by the 1st defendant till all aspects are proved, it causes prejudice and hardship to 1st defendant as well. Therefore, the trial court opined that if the amounts are apportioned reasonably between the parties, pending final adjudication, the interests are safeguarded and to bind the parties to the final orders that are to be passed, the parties were directed to file undertaking affidavits.

The operative portion of the order reads thus :-

“Therefore, this court is of the considered opinion, if the amounts are apportioned reasonably between the parties pending adjudication of the claim, the interest of both parties can be safeguarded and if the amounts are ordered to be deposited in the Court or if the petitioner alone is allowed to take the entire rent amounts, the same would not be reasonable in the interest of justice as the rights of the parties are yet to be decided. Therefore, in order to strike the balance between the claim and counter claim of the parties is concerned with regards of their entitlement of rents and arguments made by both parties, the following arrangement is made pending disposal of the case. The first petitioner is entitled for 25% of the rent amount and R3 is entitled for 75% of the rent amount, however both parties have to file an undertake affidavit that they will redeposit the amounts in the court as and when directed.”

Mr.G.Venkat Reddy, appearing for 4th defendant, challenges the very apportionment of rent between 4th defendant and 1st defendant by contending that the property from which rent is received is mortgaged with Syndicate Bank and defendant No.4 is paying EMI to Bank, suggesting that sufficient residue is not available with 4th defendant. The 1st defendant has sold property and has received substantial consideration. If necessity arises she can certainly use the

sale consideration received from the sale of property. The 1st defendant is not suffering from ailment and there is no proof whatsoever in support of such assertion. Merely because the suit is one for partition, the apportionment by the trial court prima facie is unsustainable and liable to be interfered with and set aside by this Court.

Sri J.Janakirami Reddy, appearing for 1st defendant contends that the suit consists of three schedules and all of them are urban and valuable properties. From out of one item, the 4th defendant is receiving rent and without either taking care or paying amount to mother and unmarried sister, the 4th defendant is appropriating the rent to last pie. Therefore, from natural understanding of this undisputed circumstance, it is contended that 1st defendant and 3rd defendant are subjected to privation. Replying to the mortgage with Syndicate Bank, he has drawn the attention of the court to Exs.R-5 and R-6 and contended that the outstanding as on date is about Rs.1,00,000/- and the substantial mortgage amount was repaid or adjusted by the Bank from out of the commission payable to late P.V.Subba Rao. The 1st defendant is looking after unmarried daughter as well and prays for firstly directing depositing entire amount to the credit of suit or alternatively enhance the apportionment ordered by the trial court.

Now, the point for consideration is, whether the 1st defendant is entitled to the prayers in I.A.No.3812 of 2015, if so to what extent ?

The 1st defendant is aged about 63 years. The 1st defendant is also looking after unmarried daughter aged about 33 years. The suit is one for partition of urban and valuable properties. 4th defendant is not denying either receipt of rent or quantum from one of the items of suit schedule. The defence offered by 4th defendant is two fold. Firstly, 1st

defendant is healthy and she has received substantial sale consideration and not entitled to apportionment at the stage of suit. Secondly, 4th defendant is paying instalments to Bank and property tax to local authority. Therefore, he prays for dismissing I.A. 4th defendant would have acquitted well, if the opposition to these prayers is not exaggerated.

The trial court, as already noted, has considered the prima facie case of parties. The 1st defendant though had options under Order XL of CPC for getting a Court Receiver appointed to ensure proper accounting for the receipts received during the pendency of suit and seek permission of the court for withdrawal of a portion of a sum deposited to the credit of suit. 1st defendant instead with a view to sustaining herself and her unmarried daughter, filed the instant application for equitable deposit of rent received from tenants.

The views expressed at this stage, it is clarified, are limited for prima facie consideration of the issue and the court looks at the prayer in the application both under Section 94(e) read with Section 151 of CPC. The objection offered by 4th defendant viz., that mother is well and she has received substantial sale consideration, is referred to be rejected. The 4th defendant, being son, who is in possession of the properties ought not to have gone that far in resisting the claim of aged mother for apportionment of rent received from one of the items of suit schedules. Though it is stated that the 4th defendant has received enormous consideration by sale of a flat in Hyderabad, the allegation is not evidenced by documentary proof. Be that as it may, 4th defendant is receiving income from the property and cannot apportion total rent for himself and leave 1st defendant without source. The other

objection is that the 4th defendant is paying instalments to Syndicate Bank and on account of payment of instalments he does not have surplus rent for depositing into court.

With the assistance of counsel appearing for parties, I have perused Exs.R-5 and R-6 Loan account extracts. I am of the view that the sums said to have been paid by late P.V.subba Rao are given credit to and the outstanding amount is nominal. 4th defendant, if allowed to retain half of the rent received, can pay instalment to Bank authorities and utilize for ancillary and incidental expenses.

For all the above reasons, the objections raised by 4th defendant are not tenable and accordingly rejected.

The next question for consideration is the extent of apportionment of rents between parties during the pendency of suit ?

Admittedly, the rent received by 4th defendant is Rs.33,000/- per month. The 1st defendant and 3rd defendant are staying together. The 1st defendant is aged 63 years and the 3rd defendant is still unmarried aged 33 years. Taking note of totality of circumstances, the capacity/relationship of parties, the value of suit schedule property, the obligation attached to Bank, the order impugned in CRPS., is modified directing tenants/defendants 5 to 7 to pay 50% of rent on or before 5th of every succeeding month to 1st defendant during the pendency of suit. The rent shall be paid from 01-06-2016.

For the reasons recorded above, C.R.P.No.2707 of 2016 fails and is dismissed.

C.R.P.No.2809 of 2016 is allowed in part enhancing deposit of rent from 25% to 50%.

The learned trial Judge is directed to dispose of the suit as

expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending shall stand closed.

No order as to costs.

S. V. BHATT, J

Dt: 20-07-2016

Prv

THE HON'BLE SRI JUSTICE S.V.BHATT

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