

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3955 OF 2016

ORDER:

This revision is preferred under Article 227 of Constitution of India challenging the order dated 31.12.2015 in I.A.No.3764 of 2014 in O.S.No.129 of 2014 passed by the I Additional Chief Judge, City Civil Court, Secunderabad, whereby the petition filed under Order XV-A Rules 1 and 2 of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C.") was dismissed, declining to direct the respondent to deposit the undisputed rent for the suit schedule premises.

The revision petitioner was the petitioner before the trial Court, he filed petition under Order XV-A Rules 1 and 2 C.P.C. seeking a direction against the respondent to deposit rent at the rate of Rs.25,000/- per month alleging that M.Kiran Kumar purchased the suit schedule property from the respondent under registered sale deed dated 18.02.2012 bearing document No.241 of 2012, and on the same day the said M.Kiran Kumar and respondent entered into the lease agreement for a period of 11 months agreeing to pay monthly rent at the rate of Rs.25,000/- with a condition that in case the respondent failed to vacate the premises within 11 months, he has to pay Rs.50,000/- per moth. Subsequently, the said M.Kiran Kukmar sold the suit schedule property under an agreement of sale in favour of the revision petitioners executing registered irrevocable General

Power of Attorney dated 14.09.2012, attorned the lease in favour of the petitioners. Thus, the respondent continuing in possession and enjoyment of the property as tenant from the date of execution of irrevocable General Power of Attorney – cum- agreement of sale dated 14.09.2012 and paying Rs.25,000/- per month. But he failed to pay rent to the petitioners, on the other hand filed suit O.S.No.228 of 2012 for cancellation of sale deed dated 18.02.2012 executed in favour of M.Kiran Kumar and registered agreement of sale – cum – G.P.A. dated 14.09.2012 executed by M.Kiran Kumar in favour of the petitioners and obtained an order of *Status- quo* pending suit.

While the matter stood thus, the petitioners issued a notice on 22.01.2013 demanding the respondent to vacate the premises terminating tenancy by 28.02.2013, deliver vacant possession of the same to the revision petitioner and also to pay mesne profits at the rate of Rs.50,000/- as agreed in the lease deed itself. But the respondent did not comply with the legitimate demand of the revision petitioners. The total amount due to the revision petitioners was Rs.4,50,000/- till June, 2014 and after termination of the tenancy, the defendant has to pay damages for use and occupation at the rate of Rs.50,000/- per month. Therefore, the revision petitioners filed suit for ejectment of respondent from the schedule premises and for recovery of arrears of rent.

The respondent resisted the claim of the petitioner on various grounds mainly contending that when he is in need of money, he approached M.Kiran Kumar, who is a tailor by profession and the said M.Kiran Kumar also informed him that he is also in dire need of money and they approached the petitioners for loan and obtained loan of Rs.20,00,000/- from them and M.Kiran Kuamr paid only Rs.9,00,000/- to the petitioners after deducting Rs.1,00,000/- towards advance amount of interest and later the respondent was unable to discharge the debt, thereupon on the advise of M.Kiran Kumar to obtain loan from any bank, the respondent executed a sale deed in favour of M.Kiran Kumar, who in turn allegedly executed irrevocable General Power of Attorney – cum - agreement of sale dated 14.09.2012. The sale deed dated 18.02.2012 is only created taking advantage of the signatures on blank papers obtained by M.Kiran Kumar as security. Therefore, there was no subsisting relationship of landlord and tenant between M.Kiran Kumar and respondent. Thereby, the sale under irrevocable General Power of Attorney – cum – agreement of sale is invalid and the petitioners are not entitled to claim any rent or arrears of rent from the respondent as there was no relationship of tenant and landlord between the respondent and petitioners and prayed for dismissal of the petition.

The trial Court upon hearing argument of both the counsel dismissed the petition holding that the petitioners are

not the owners and they are not entitled to recover the amount in view of the facts and circumstances of the case.

Aggrieved by the order dated 31.12.2015 passed in I.A.No.3764 of 2014 in O.S.No.129 of 2014 by the I Additional Chief Judge, City Civil Court, Secunderabad, the present revision is filed raising several contentions mainly contending that the findings of the trial Court regarding jural relationship of landlord and tenant is erroneous on the face of the record and the order in I.A.No.3253 of 2012 in O.S.No.228 of 2012 filed by the respondent against the petitioners and M.Kiran Kumar is only an ad-interim injunction restraining the petitioners and M.Kiran Kumar from interfering with his possession and enjoyment of the schedule property till he is evicted by due process of law, would not come in the way of the petitioners to claim arrears of rent and eviction of the respondent from the schedule premises. But the trial Court on erroneous appreciation of the material available on record, dismissed the petition and prayed to set aside the impugned order passed by the trial Court and issue a direction for payment of rent and arrears of rent till termination of tenancy and thereafter damages as claimed by the petitioners.

Sri P.Shiv Kumar, learned counsel for the revision petitioners, during argument contended that the irrevocable General Power of Attorney – cum – agreement of sale obtained by the petitioners created interest in the immovable property and thereby they are entitled to claim right over the schedule

property. When the said M.Kiran Kumar, who purchased the property from the respondent attorned tenancy in favour of the petitioners, the respondent is bound to pay rent and arrears of rent to the petitioners till termination of the tenancy and thereafter damages as claimed by the petitioners.

Sri P.Ram Chander, learned counsel for the respondent, would contend that the petitioners are claiming ownership based on agreement of sale – cum – General Power of Attorney, which in fact would not create any title over the property and convey ownership over the immovable property, thereby claim of ownership based on General Power of Attorney is unsustainable under law and that would not create any relationship of landlord and tenant between the petitioners and respondent. It is further contended that the issue of lease itself is dispute, the Court cannot direct the respondent to deposit the rent or damages exercising power under Order XV-A and placed reliance on a judgment of this Court reported in “**Najamuddin Kazi v. Mohd.Abdul Aziz**”¹ and prayed for dismissal of the revision petition in view of the limited jurisdiction of this Court under Article 227 of Constitution of India.

Considering rival contentions and perusing the order under challenge, the point that arises for consideration is:

“Whether the petitioners are the landlords of respondent, if not is the respondent liable to deposit rent into the Court during pendency of the suit?”

¹ 2013 (5) ALD 397

P O I N T:

The basis for claiming right over the property by the petitioners is irrevocable General Power of Attorney – cum-agreement of sale dated 14.09.2012. In the plaint, they specifically contended that the petitioners/plaintiffs became owners of the property by purchase of the property under irrevocable General Power of Attorney – cum- agreement of sale dated 14.09.2012, it is not their case that they were acting as agents of M.Kiran Kuamr, who obtained registered sale deed from the respondent. The said General Power of Attorney though irrevocable does not create interest in the property under Section 202 of Contract Act, that would not convey or transfer title over the immovable property.

In “**Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana and Anr.**”² the Apex Court categorically held that immovable property can be legally and lawfully transferred/conveyed, only by a registered deed of conveyance. Transactions of the nature of “General Power of Attorney Sales” or “Sale agreement/Will Transfers”, do not convey title and do not amount to transfer, nor can they be recognized as valid mode of transfer of immovable property. The Courts will not treat such transactions as contemplated or concluded transfers or as conveyances as they neither convey title nor create any interest in any immovable property

² AIR 2012 SC 206

and that they cannot be recognized as deeds of title, except to the limited extent of Section 53 of Transfer of Property Act.

If the principle laid down in “**Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana**” (referred supra) is applied to the present facts of the case, such General Power of Attorney – cum- agreement of sale would not create any interest in the immovable property. Even otherwise according to Section 54 of Transfer of Property Act, agreement of sale would not create any interest in the immovable property and title can be conveyed in immovable property only by executing deed of conveyance or any recognised mode of transfer of property but not by irrevocable General Power of Attorney – cum – Agreement of sale. Therefore, based on the irrevocable General Power of Attorney – cum – Agreement of sale, the revision petitioners are not entitled to claim ownership of the property till the property is conveyed in their favour by M.Kiran Kumar. Hence, the petitioners are disentitled to claim direction to deposit arrears of rent or future rent for occupation of property without ownership over the property, they cannot claim arrears of rent from the respondent.

It is the contention of the petitioners that there was lease agreement between M.Kiran Kumar and respondent and the said M.Kiran Kumar attorned the tenancy. Thereby, the respondent is continuing as tenant in the premises. The attornment under Section 109 of Transfer of Property Act, reads as follows:

“109. Rights of lessor's transferee :- If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract, to the contrary, shall possess all the rights and if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it ; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.”

Even if the execution of registered power of attorney is true, as per the Transfer of Property Act, the attornment cannot take place automatically since the irrevocable General Power of Attorney – cum – Agreement of sale would not create any interest in immovable property as held by the Apex Court in “**Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana**” (referred supra) and unless the lessee elects to treat the transferee as the person liable to him; since the respondent, alleged tenant did not elect to treat the petitioners as landlords, they cannot claim relief under Order XV-A of A.P. amendment to C.P.C. Therefore, the petitioners are not *prima facie* entitled to claim relationship of landlord and tenant between them and respondent by virtue of alleged attornment.

It is an admitted fact that the respondent filed O.S.No.228 of 2012 for cancellation of sale deed and General Power of Attorney – cum – agreement of sale and obtained interim order. If for any reason, the sale deed is set aside, automatically the alleged relationship of landlords and tenant would cease to exist. As on today, there is absolutely no material to prove that the relationship of landlord and tenant was existed between the petitioners and respondent and when such issue is in dispute, the Court cannot direct the respondent, who is in occupation of the property to deposit rent in view of principle laid down in “**Jayabharat Automobiles v. Dr.V.S.V.Ramesh**”³

Having regard to serious dispute regarding ownership of the property, it is difficult to accept the subsisting jural relationship of landlords and tenant between the petitioners and respondent to direct the respondent to deposit the arrears of rent and damages for use and occupation at this stage. Therefore, the trial Court did commit no error in passing such order.

Article 227 deals with power of superintendence by the High Court over Subordinate Courts and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even

³ 2013 (5) ALD 120

where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226, in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in *certiorari* jurisdiction and such power can also be exercised *suo motu*.

It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State, through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru**⁴, that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds. Therefore, I am unable to exercise power under Article 227 of the Constitution of India to interfere with the findings recorded by the trial Court since the trial Court acted within its bounds and passed the order, which is under challenge.

In view of the principle laid down in the above judgment, even if the impugned order is erroneous the Court cannot interfere in the said findings, while exercising jurisdiction under Article 227 of Constitution of India even

⁴ 2003 (6) SCC 641

though the trial Court did not exceed its jurisdiction in passing order or failed to pass an order within the jurisdictional limits or passed any order based on extraneous material. It is not the case of the petitioners before this Court that the trial Court passed impugned order based on extraneous material or evidence or failed to exercise its jurisdiction. In those circumstances, it is difficult for me to overturn the order passed by the trial Court. Hence, the order dated 31.12.2015 passed in I.A.No.3764 of 2014 in O.S.No.129 of 2014 passed by the I Additional Chief Judge, City Civil Court, Secunderabad is confirmed and the revision is liable to be dismissed. The findings recorded hereinabove are for limited purpose of the revision and the trial Court is directed to decide the lis pending before the Court uninfluenced by the findings recorded herein.

In the result, the revision is dismissed without costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:14.10.2016
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