

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.1085 OF 2017

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 30.01.2017 passed by the learned Principal Junior Civil Judge, Medchal, in I.A.No.759 of 2016 in O.S.No.26 of 2016. This I.A. was filed by the petitioner, the defendant in the suit, under Order 7 Rule 11 CPC seeking rejection of the plaint. By the order under revision, the trial Court dismissed the I.A. Aggrieved thereby, the defendant is before this Court.

O.S.No.26 of 2016 was filed for eviction of the defendant from the suit schedule property and for damages. Description of the property in question in the suit schedule is as under:

‘All that the piece of schedule land bearing suit schedule of land in R/o H.No.14-20, Srinivas Nagar, Gajularamaram Road, Mini Industrial Estate, Quthubullapur Mandal, Ranga Reddy District, Telangana, and bounded by:

North:	Existing shed of the Lessor
South:	Compound wall of the Lessor
West:	Road after that shed No.19
East:	Road’

The claim of the petitioner-defendant was that the trial Court had no jurisdiction to entertain the suit as the leased premises would fall within the ambit of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for brevity, ‘the Act of 1960’), as the monthly rental therefor was fixed at Rs.2,633/-. He would further claim that as the respondent-plaintiff was seeking damages to the tune of Rs.1,50,000/- per month, he had to pay court-fee thereon in terms of Section 40 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956, but he failed to do so. He asserted that the suit

was barred by law and that the respondent-plaintiff had purposefully undervalued the suit and paid insufficient Court fee. On these grounds, he sought rejection of the plaint by way of the subject I.A.

The respondent-plaintiff contested the I.A. by stating in his counter that the tenancy as per the lease deed dated 30.04.2009 expired on 08.12.2015 and that the petitioner-defendant continued in possession illegally thereafter. As the suit was filed one month after the expiry of the lease period, the respondent-plaintiff justified payment of court-fee by valuing the damages for one month. Further, as the tenancy under the registered lease deed dated 30.04.2009 had already expired, he contended that the question of testing the suit based on the tenancy and the rents did not arise.

The trial Court opined that two conditions must be fulfilled to attract the provisions of the Act of 1960 – the monthly rent of the building should not exceed Rs.3,500/- in areas covered by municipal corporations, and the building should have been constructed or substantially renovated fifteen years prior to the date on which the Act of 1960 is sought to be applied to it. Applying these tests to the case on hand, the trial Court found that the respondent-plaintiff's registered sale deed dated 29.09.2004 evidenced that he had purchased the land thereunder along with a shed constructed thereon, admeasuring 600 square feet. However, the trial Court observed that until a full-fledged trial was conducted, the age of the shed could not be ascertained and it would be premature to conclude that its age was more than fifteen years as on the date of filing of the suit. The contention of the petitioner-defendant as regards the jurisdiction of the trial Court to entertain the suit was therefore negatived. As regards the contention as to undervaluation of the suit,

the trial Court found no merit in it as the valuation of the suit based on the annual rental demonstrated that the required court-fee had been paid by the respondent-plaintiff. Holding that the application was premature, the trial Court dismissed the I.A.

Sri Pushadapu Subba Rao, learned counsel for the petitioner-defendant, would contend that the sale deed dated 29.09.2004, whereunder the respondent-plaintiff had acquired the property in question, clearly demonstrated the existence of a shed in the land admeasuring 350 square yards purchased thereunder. Learned counsel would rely upon the registered lease deed bearing Document No.3029/2009 dated 30.04.2009, granting tenancy rights to the petitioner-defendant, and point out that the extent of land was reduced to 250 square yards and the rent reserved thereunder initially was Rs.2,000/- per month with enhancement at 4% after every twelve months. Learned counsel would contend that reading the documents together clearly indicated that the shed was more than fifteen years old. Consequently, the Act of 1960 has application, ousting the jurisdiction of the trial Court to entertain the suit.

Per contra, Sri P.R.K.Amarendra Kumar, learned counsel for the respondent-plaintiff, would assert that the trial Court missed a crucial fact while dealing with the subject I.A. Learned counsel would point out that the registered lease deed dated 30.04.2009 evidenced that only vacant land was given on lease to the petitioner-defendant and therefore, the age of the shed, which still remained with the respondent-plaintiff and was not subjected to the tenancy created under the aforestated lease deed, has no relevance whatsoever. He would therefore contend that the Act of 1960 has no application as the lease was created only over a vacant piece of land.

Perusal of the registered lease deed dated 30.04.2009 bears out this fact. The schedule appended thereto clearly demonstrates that 250 square yards of land was leased by the respondent-plaintiff to the petitioner-defendant thereunder. The northern boundary of the leased premises is shown as the existing shed of the lessor. Though Sri Pushadapu Subba Rao, learned counsel, would assert that this aspect of the matter was never raised before the Court below, the documents in question bear out this significant fact, now brought to light by Sri P.R.K.Amarendra Kumar, learned counsel. Once the subject matter of the lease was only land and not a building, applying the provisions of the Act of 1960 does not arise. Order 7 Rule 11 (d) CPC would therefore have no application. As regards the alleged undervaluation of the suit, no arguments were advanced by the learned counsel and, in consequence, the said ground is deemed to have been given up. In effect, there is no error in the order under revision warranting interference.

The Civil Revision Petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

21st JULY, 2017

PGS