

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.956 & 973 of 2017

COMMON ORDER:

These two revisions are filed by the respondents 2 to 5 in R.C.No.242 of 2004 filed by the petitioner therein on the file of the Court of the learned I Additional Rent Controller, Hyderabad.

1.1. The said respondents are aggrieved of the orders, dated 03.02.2017, passed by the said learned Rent Controller whereby their petitions in IA.Nos.17 & 18 of 2017 filed for reopening the evidence and recalling PW1 for further cross examination were dismissed.

2. I have heard the submissions of Ms. S. Hemalatha, learned counsel for the revision petitioners, and of Sri Shyam Sunder Agarwal, learned counsel for the 1st respondent. I have perused the material record.

3. The parties shall hereinafter be referred to as the petitioner and the respondents as arraigned in the Rent Control Case (RC).

4. To begin with, it is to be noted that the petitioner-1st respondent in these revisions filed the afore-stated RC for eviction of the respondents 1 and 2 in the RC. The schedule property is a shop/mulgi in Charkaman road, Hyderabad. The 1st and 2nd respondents are concerns namely M/ s. Maheschand Benigopal and M/ s. New Reliance Type Writing & Shorthand Institute & Xerox centre. They were originally being represented by G. Lingaiah, who is no other than the husband of the 5th respondent and the father of the respondents 3 & 4 in the RC. Lingaiah died during the pendency of the RC. However, before his death, he filed a counter resisting the RC. In the counter he categorically stated that it is true that the 2nd respondent is the present tenant of the petition schedule property and that rents are being regularly paid till date as

per oral agreement. However, on his death, the respondents 3 to 5, who are his sons and wife, were brought on record of the RC. They filed additional counter. In the said additional counter they stated as follows: - 'The petitioner is put to strict proof that he is the owner of the property. From reliable sources it came to their knowledge that late Saraswathi Bai has no issues and she died issueless and hence, the petitioner in the RC has to establish his ownership over the property by submitting relevant documents. However, they are not interested in denying the right of the petitioner in the RC to collect rents as he was collecting rents earlier on behalf of the original landlord.' Be that as it may.

4.1 During the course of enquiry into the RC, after PW1 was examined, the respondents 3 to 5 filed the afore-stated two petitions to reopen the evidence on the side of the petitioner and recall PW1 for further cross examination, *inter alia*, stating in their petitions as follows: - 'Lingaiah was the tenant in the petition schedule premises. He used to run a typewriting institute. The firm is not the tenant at any point of time. Lingaiah expired, on 09.04.2007. Thereafter, the respondents 3 to 5, being the legal representatives of the said Lingaiah are impleaded as respondents in the RC. While adopting the counter already filed by Lingaiah, the impleaded respondents 3 to 5 filed an additional counter. After the death of Lingaiah, respondents 3 to 5 are paying rents to the petitioner in the RC. However, he is not passing any receipts. Though PW1 was cross examined earlier by the counsel who represented late Lingaiah and the matter is now posted for the evidence of the respondents, the present counsel while preparing for arguments in the Interlocutory Application filed under Section 11 of the A. P. Buildings (Lease, Rent & Eviction) Control Act, 1960, noticed that important questions were not put to PW1 by the former counsel. Further, in view of the addition of the respondents 3 to 5 in the eviction case and the additional counter filed by them, it is necessary to

reopen the evidence and recall PW1 for further cross examination. Hence the petitions are filed.'

4.2 Per contra, the case of the petitioner in the RC, in his counter, in brief, is as follows: - 'The material allegations in the petitions of the respondents 3 to 5 are false. The allegation that Lingaiah was the tenant and he was running a typewriting institute is false. In fact, 2nd respondent viz., M/s. New Reliance Typewriting & Shorthand Institute and Xerox Centre was the tenant of the schedule property and it was being represented by late Lingaiah. Therefore, the allegations that Lingaiah was the tenant and that after his death, respondents 3 to 5 became tenants in the property are incorrect. The additional counter is filed with false and baseless allegations. It is false to say that after death of Lingaiah in April, 2007, respondents 3 to 5 are paying rents and that receipts are not being issued. PW1 was cross examined by the former counsel of the respondents. The allegations that the said counsel failed to put important questions and that the said fact was noticed by the present counsel while preparing for advancing arguments in the petition filed under Section 11 of the Act are also false and invented. A request cannot be made to reopen the evidence and recall a witness, by making false allegations on the former counsel behind his back. The respondents 3 to 5 failed to state as to what are the important questions that their former counsel failed to put to PW1. If the petitioners have any defence it is for them to adduce evidence; but, they cannot recall PW1 in the circumstances stated by them. The RC is pending since 2004 and the respondents 3 to 5 are dragging on the matter by filing frivolous petitions. No valid grounds are stated for reopening the evidence and recalling PW1. Hence, the petitions are liable to be dismissed.'

4.3 As already noted, by the orders impugned in these revisions, the trial Court dismissed both the petitions of the respondents 3 to 5.

5. The learned counsel for both the sides advanced arguments in line with the pleadings of the parties, which are stated supra.

6. I have given detailed and thoughtful consideration to the facts and submissions.

7. It is to be first noted that in the petition for eviction filed by the petitioner against the respondents 1 and 2, late Lingaiah, who is representing the respondents 1 & 2 filed a counter admitting that the 2nd respondent, that is, M/s. New Reliance Typewriting and Shorthand Institute and Xerox Centre is the tenant and that it is regularly paying the rents. On his death, his sons and wife were brought on record in the RC as respondents 3, 4 and 5, as they are admittedly his legal representatives. They have now taken a stand which is at variance with the stand already taken by Lingaiah. Though, Lingaiah already admitted in his counter, the jural relationship and stated that the 2nd respondent is the tenant and it is regularly paying rents, the impleaded respondents 3 to 5 in their additional counter stated that the petitioner in the RC has to prove the ownership of the property and that it came to their knowledge that one Saraswati Bai has no issues and, therefore, it is for the petitioner to prove the ownership over the petition schedule property. It is also to be noted that one RC.no.323 of 2002 was earlier filed for eviction by the petitioner against the respondents 1 & 2. In that RC, which was dismissed for default, on 08.05.2003, Lingaiah, who represented the very same 2nd respondent, filed a counter categorically stating that it is true that 2nd respondent is the present tenant and that the respondents 1 and 2 have been paying rents regularly till date as per the oral agreement. Thus, Lingaiah, who represented the 2nd respondent-tenant during his life time, never denied the ownership or the jural relationship; whereas, in the additional counter, the impleaded respondents 3 to 5, who are the legal heirs of the deceased Lingaiah, went to the extent of saying that the petitioner in the eviction case

has to prove his ownership and that they came to know that Saraswati Bai had no issues and, therefore, the petitioner is required to prove his ownership over the petition schedule property. Therefore, the main contention of the petitioner in the RC is that he cannot be recalled for cross examination on the impermissible defence now raised in the additional counter filed by the respondents 3 to 5. It is also his further case that the respondents 3 to 5 cannot be permitted to recall him by seeking reopening of the evidence even without stating any reasons and without disclosing the points on which he (PW1) was not cross examined earlier and by merely throwing the blame on their former counsel, behind the back of the said counsel. Per contra, the respondents 3 to 5 submit that they are not denying the title and that they are only denying the ownership and that they are also willing to pay the rents to the petitioner in the eviction case as he was earlier collecting the rents from them and that they are constrained to recall PW1 for further cross examination only because their former counsel failed to put important questions. They also submit that they cannot be compelled to disclose the questions, which they intend to put to PW1, as disclosing of such questions beforehand would cause prejudice to them and frustrate the purpose of recalling the witness. In the first place, the legal representatives of Lingaiah, who originally represented the 2nd respondent concern, are not entitled under law to take a defence that is at variance with the defence already taken by Lingaiah and they are not supposed to dispute the ownership of the petitioner in the RC as well as the jural relationship between the petitioner and the respondents 1 and 2, since late Lingaiah admitted the same. A perusal of the affidavits filed in support of the petitions would show that it is casually stated by the respondents 3 to 5 that the former counsel failed to put important questions and that the said fact is noticed by the present counsel while preparing for arguments in an interlocutory application and that, therefore, PW1 is to be recalled. In my considered opinion when the respondents failed to give valid reasons, much

less acceptable reasons, they cannot be permitted to seek reliefs of reopening of the evidence or recalling of the witness by merely throwing the blame on their former counsel. In view of the facts peculiar to the case and as it appears from the facts borne out by the record that there are no *bona fides* in the present requests and the stand taken by the respondents 3 to 5, this Court finds that the trial Court is justified in dismissing the petitions and that the orders impugned in these revisions do not warrant interference.

8. In the result, the Civil Revision Petitions are dismissed confirming the orders impugned.

Miscellaneous petitions pending, if any, in these revision cases shall stand closed.

16.08.2017
Vjl



M. SEETHARAMA MURTI, J