

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4356 of 2017

ORDER:

1) Assailing the order, dated 30.06.2017, passed in A.T.A.No.25 of 2015 on the file of the Principal District Judge, Rajamahendravaram, wherein the order dated 29.09.2015 passed in A.T.C.No.4 of 2011 on the file of the Special Officer under A.P.Tenancy Act-cum-Principal Junior Civil Judge, Peddapuram, was confirmed, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

Respondent No.1 herein filed A.T.C.No.4 of 2011 under Section 13 (a) & (c) of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, seeking eviction of respondent No.2 herein and the petitioners herein from the petition schedule property and to deliver vacant possession of the schedule property.

It is stated in the A.T.C. that respondent No.1, who is the owner of the schedule property, leased out the schedule property to one Doddi Bulli Veerajarju (hereinafter referred to as "the tenant"), who is the father of respondent No.2 herein and grandfather of the petitioners herein in the year 1973-74, on payment of maktha of 60 bags of paddy per year. As the tenant, failed to pay the Maktha, respondent No.1 filed O.S.No.634 of 1974 for recovery of maktha. The said suit was decreed on 15.11.1979 and the amount paid by the tenant was withdrawn by

him. Again the tenant failed to pay the maktha, respondent No.1 filed O.S.No.60 of 2005 for recovery of maktha of Rs.97,475/- for the year 2003-2004. Vide common judgment dated 09.12.2003 passed in S.A.Nos.98/ 1996, 116/ 1996 and 204/ 1996, the High Court declared that the said Bulli Veera Raju is the cultivating tenant and the entitlement of respondent No.1 to recover the arrears of Maktha and directed him to recover the same. As such, respondent No.1 filed A.T.C.No.6 of 2004 seeking eviction on the ground of willful default of payment of maktha and also filed A.T.C.No.6 of 2005 for fixation of fair rent. The Tribunal fixed the rent at 100 bags ie. 45 bags for 1st crop and 55 bags for second crop from 2005.2006 and the eviction petition filed by the respondent No.1 was dismissed. Challenging the same, respondent No.1 herein filed an appeal. Though the tenant continued to cultivate the lands, but he did not pay maktha for 2005 to 2007 as per the agreement. Hence respondent No.1 filed an application, in the appeal, seeking appointment of an advocate-commissioner for collecting the paddy. The said application was allowed and an advocate-commissioner was appointed. When the Advocate-commissioner visited the leasehold lands, he found paddy stock in the lands but could not collect the same as the tenant did not allow. Subsequently, the tenant continued to cultivate the land without paying maktha. The tenant died on 24.12.2008 leaving respondent No.2 herein and father of the petitioners. They are trying to sell away the immovable

properties of the tenant, respondent No.1 filed O.S.No.66 of 2009 for realization of maktha amount for the year 2008-2010. Though the same was decreed but the arrears were not paid. Subsequently, the father of the petitioners died in the month of March, 2011 and when he demanded for payment of Maktha, they reported that they were not in a position to pay or cultivate the schedule property. Then, respondent No.1 herein filed O.S.No.112 of 2011 for recovery of second crop. In the mean time, the petitioners sub-leased the schedule land to others, who are ploughing the land to transplant paddy. As the petitioners willfully defaulted to pay maktha and failed to cultivate the land for themselves, respondent No.1 herein filed a petition for eviction.

3) The petitioners herein filed counter denying the averments made in the affidavit. It is stated in the counter that the wife of the cultivating tenant Bulli Veeraraju is alive and she is necessary party to the petition, but she was not shown as party. As such, the petition is liable to be dismissed for non-joinder of necessary parties. It is also stated that the petitioners never sub-leased the land and there are no arrears in payment of maktha.

4) After considering the oral and documentary evidence, the trial Court allowed the petition. Aggrieved by the same, the petitioners filed A.T.A.No.25 of 2015. By its judgment dated 30.06.2017, the Principal District Judge, Rajamahendravaram,

rejected the said A.T.A. Challenging the same, the present Civil Revision Petition is filed.

5) Learned counsel for the petitioners mainly submits that the wife of the original cultivating tenant is alive and respondent No.1 intentionally filed the application against the petitioners herein without making her as party to the proceedings. He further submits that there are no arrears in payment of maktha to respondent No.1.

6) Learned counsel for respondent No.1 mainly submits that the legal heirs of the cultivating tenant failed to exercise the option to continue as tenants after the death of the original tenant under Section 10 (5) of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short "the Act"). As such they cannot be treated as cultivating tenants and that respondent No.1 is entitled to seek their eviction. He further submits that the petitioners failed to pay the maktha, he filed O.S.No.112 of 2011 for recovery of the second crop of 2009-2011 and both crops upto 2011. He further submits that pending the said suit, the petitioners sub-leased the land to others, who are ploughing the land, as such, the petitioner filed the petition seeking eviction of the petitioners.

7) Before proceeding further, it would be useful to refer to section 10 (5) of the Act, which reads as under:

Section 10: Rights of cultivating tenants:

1. xxxxxx
2. xxxxxx
3. xxxxxx

4. xxxxxx

5. All rights of cultivating tenant under this Section shall, subject to the provisions of Sections 12 and 13, be heritable.

Explanation I : For the purpose of construing the term 'heritable' in this section, the following persons only shall be deemed to be heirs of a cultivating tenant, namely:

- a) his legitimate lineal descendants by blood or adoption;
- b) in the absence of any such descendants, his widow for so long as she does not re-marry:

Provided that where there is more than one heir, the heirs shall be entitled to sub-divide the interest in the holding according to their shares.

Explanation II : If a cultivating tenant dies without leaving a heir as aforesaid, all his rights shall be extinguished."

8) It is an admitted fact that respondent No.1 is the owner of the schedule property and one Doddi Bulli Veeraraju, who is the father of respondent No.2 and grand father of the petitioners, was the cultivating tenant of the land. He died on 24.12.2008 leaving behind respondent No.2 and father of the petitioners. The father of the petitioners also died in March, 2011. Admittedly no option was exercised by the legal representatives of the original tenant under section 12 of the Act. Therefore, the petitioners cannot be considered as cultivating tenants after the expiry of the period of three months subsequent to the death of the original tenant or his son.

9) In *M. Ramayya v. M. Govindu*¹ a Division Bench of this Court held as under:

“When once an option as contemplated under Section 12 of the Act is not exercised by the legal representatives of the deceased tenant, they cannot be considered as cultivating tenants and they have to be treated as mere trespassers and that civil suit for recovery of possession by the landlord is maintainable under such circumstances.”

10) Section 10 (5) of the Act makes it clear that only the children of original tenant shall be considered as heirs in respect of the leasehold rights. As the lineal descendants are in existence, there is no need to add, the widow of the original tenant or widow of the son of original tenant as parties. As such, the trial Court rightly came to the conclusion that the petition is maintainable without impleading the wife of the original tenant and also wife of the son of the original tenant.

11) It is to be noted here that the tenant is under an obligation to pay the agreed rent within the stipulated time. Default in payment gives the landlord a legal right to terminate the tenancy seeking eviction. RW.1 admitted in her evidence that she does not know whether her husband paid any arrears of rent to the petitioner during his life time or not. She further admits that they never paid any rent to the petitioner. She also stated that she along with her mother-in-law are cultivating the schedule property. Though cultivating the land, they failed to pay the rent to respondent No.1-landlord. For recovery of arrears of rent, first

¹ 1966 (1) ALT 424

respondent filed O.S.No.112 of 2011. Since the tenant committed default in payment of arrears of rent, the trial Court rightly came to the conclusion that respondent No.1 is entitled for eviction.

12) For the aforesaid reasons, I see no illegality or irregularity in the order passed by the trial Court in A.T.C.No.4 of 2011, which was confirmed in A.T.A.No.25 of 2015 on the file of the Principal District Judge, Rajamahendravaram.

13) Accordingly, the Civil Revision Petition is dismissed. 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

08.12.2017
gkv

