

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION NO.539 OF 2017

M/s. Rao's Educational Society

.. Petitioner

Vs.

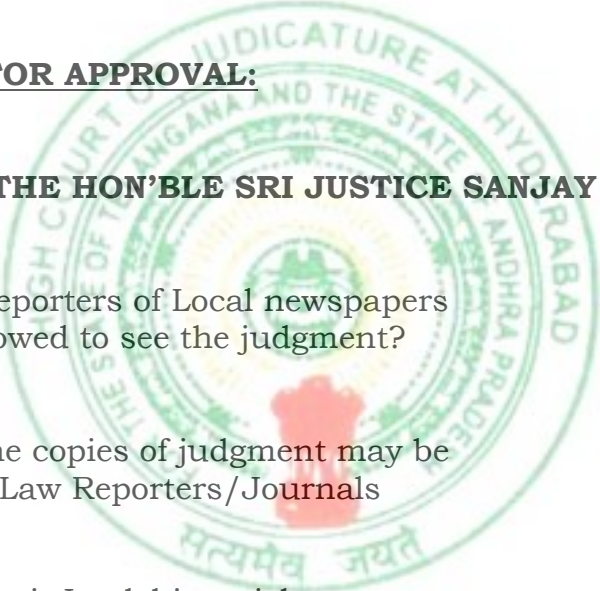
Gaddam Sampath Kumar

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 23.02.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR**
+ CIVIL REVISION PETITION NO.539 OF 2017

% DATED 22nd FEBRUARY, 2017

M/s. Rao's Educational Society .. Petitioner

Vs.

\$ Gaddam Sampath Kumar .. Respondent

<Gist:

>Head Note:

! Counsel for petitioner : Sri Vedula Venkata Ramana and
M/s. Bharadwaj Associates

^Counsel for respondent : Sri D.V.Seetha Rama Murthy and
Sri P.Shravan Kumar Goud

? CASES REFERRED:

1. Civil Appeal No.50 of 2014 dated 03.01.2014 (Supreme Court)
2. AIR 1951 SC 177
3. 2013 (6) ALT 23

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.539 OF 2017

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 05.10.2016 passed by the learned XVI Additional District and Sessions Judge, Ranga Reddy District at Malkajgiri, in I.A.No.526 of 2016 in O.S.No.778 of 2015. O.S.No.778 of 2015 was filed by the respondent herein for the following reliefs:

- '(a) To evict the defendants from the Suit Schedule Property i.e., all that part and parcel of the Premises consisting of Ground, First, Second and Third floors bearing Survey No.145/A-Part, admeasuring 1805.78 sq. mts (2160 sq. yards) situated at Bachupally village, Pragatinagar Gram Panchayat and to direct the defendants to deliver the vacant and peaceful possession of the same to the Plaintiff,
- (b) To direct the defendant to pay a sum of Rs.20,24,000/- (Rupees Twenty Lacs Twenty Four thousand only) along with interest @ 24% per annum from 12/06/2015 to till the date of passing judgment and decree and also to pay future interest of 6% pa from the date of decree and judgment to till the date of payment of decretal amount, being the amount representing loss of building materials,
- (c) to direct the defendant to pay compensatory damages to the Plaintiff payable @ Rs.50,000/- (Rupees Fifty thousand only) per day to the Plaintiff to till the date of vacation of the defendants from the Suit Schedule Property.
- (d) to award costs of the suit, and
- (e) pass such other relief or reliefs as this Hon'ble Court deem fit and proper in the interest of Justice."

The respondent/plaintiff filed I.A.No.526 of 2016 in the said suit under Order 15-A CPC seeking a direction to the petitioner/1st defendant to deposit rent at the rate of Rs.10.15 paise per square foot for 65,000 square feet from 14.12.2014 till 31.03.2016 and for every

month thereafter. By the order under revision, the trial Court allowed the I.A. in part and directed the petitioner/1st defendant to deposit monthly rent of Rs.4,25,000/- from January, 2015 onwards and to continue to pay the rentals in future at the same rate. The arrears from January, 2015 to November, 2016 were directed to be deposited within two months and the future rents were to be deposited on or before the 10th day of every month commencing from December, 2016. Aggrieved thereby, the petitioner/1st defendant filed this revision.

Heard Sri Vedula Venkata Ramana, learned senior counsel appearing for M/s. Bharadwaj Associates, learned counsel for the petitioner/1st defendant, and Sri D.V. Seetha Rama Murthy, learned senior counsel representing Sri P. Shravan Kumar Goud, learned counsel on caveat for the respondent/plaintiff.

Parties shall hereinafter be referred to as arrayed in the suit.

Perusal of the plaint averments reflects that the plaintiff claimed title over the suit schedule property, a building comprising ground, first, second and third floors, situated in an extent of 2,160 square yards in Sy.No.145/A-Part of Bachupally Village, Pragatinagar Gram Panchayat, Quthbullapur Mandal, Ranga Reddy District, under a gift deed dated 19.06.2014 said to have been executed in his favour by his mother, G.Karuna Devi. He however admitted that his mother had entered into an agreement on 02.05.2014 for executing a lease in favour of the 1st defendant in relation to the suit schedule property. His specific case, however, was that the 1st defendant did not come into possession of the suit property by virtue of any lease but had criminally trespassed into the said property. He pointed out that the 1st defendant had filed O.S.No.1465 of 2014 seeking registration of a

lease deed in its favour, which clearly demonstrated that there was no lease executed by his mother in its favour. He categorically asserted that the 1st defendant had encroached into the suit schedule property illegally and that it was not his tenant. He therefore sought compensatory damages of Rs.50,000/- per day.

It is therefore clear that the plaintiff did not accept that there was any lease in favour of the 1st defendant, be it through his mother or through him, and the thrust of his case was that the 1st defendant had encroached upon the suit schedule property and was therefore liable to pay compensatory damages of Rs.50,000/- per day. Having adopted this stance in the plaint, the plaintiff strangely filed I.A.No.526 of 2016 in the suit stating that he had entered into an agreement with M/s.Sri Kalyana Chakravarthy Memorial Trust which had agreed to pay Rs.10.15 paise per square foot per month for the building comprising six floors, admeasuring 65,000 square feet, for running a college under the name and style of Chaitanya Junior College, but as the 1st defendant had illegally occupied the property and was not paying rent, he was constrained to file the subject I.A. for a direction to the 1st defendant to pay rent at the same rate agreed to be paid by Chaitanya Junior College.

This contradictory stand of the plaintiff was completely brushed aside by the trial Court while passing the order under revision. The trial Court merely went by the fact that the 1st defendant admitted its possession over the suit property, wherein it was running a Junior College, claiming that it came into possession under the lease document dated 02.05.2014 said to have been executed by the plaintiff's mother. The trial Court therefore opined that equity was in favour of giving a direction to the 1st defendant to

pay a sum of Rs.4,25,000/- per month towards monthly rent. This figure of Rs.4,25,000/- was adopted on the strength of the rental value of the suit property shown by the 1st defendant in its own suit in O.S.No.1465 of 2014. The trial Court further observed that if the 1st defendant continued to remain in the suit property without paying rent, it would cause irreparable loss to the plaintiff and that though the plaintiff had alleged that the 1st defendant occupied the suit property illegally, the claim of the 1st defendant was that it came into possession of the suit property under the lease document dated 02.05.2014. The trial Court accordingly granted relief to the plaintiff as stated *supra*.

Sri Vedula Venkataramana, learned senior counsel, would point out that Order 15-A CPC would have application only in a suit filed by a lessor/licensor against a lessee/licensee. He would contend that this provision had no application whatsoever in the present case when the plaintiff categorically **denied** the very existence of a lease, be it between himself and the 1st defendant or his mother and the 1st defendant.

Per contra, Sri D.V.Seetha Rama Murthy, learned senior counsel, would contend that once the 1st defendant claimed to have been put in possession of the suit property pursuant to the lease document dated 02.05.2014 executed by the plaintiff's mother and as the plaintiff stepped into the shoes of his mother pursuant to the gift in his favour under document dated 19.06.2014, the leasehold rights claimed by the 1st defendant under the lease document dated 02.05.2014 stood attorned in his favour and therefore, the plaintiff was well within rights in filing the application under Order 15-A CPC.

It may be noted that the provisions of Order 15-A CPC can only be invoked by a lessor/licensor who seeks eviction of the lessee/licensee from the leased/licensed premises with or without arrears of rent/licence fee. The suit claim must therefore be one for eviction of a lessee/licensee and must have been instituted by a lessor/licensor. In the present case, the claim of the plaintiff, as is clear from the suit averments, is that there is no lease in existence, be it between himself and the 1st defendant or between his mother and the 1st defendant. He specifically alleged that the 1st defendant had come into illegal possession of the suit schedule property by encroaching thereupon. That was the basis for his claim for compensatory damages at the rate of Rs.50,000/- per day.

This being the nature of the suit filed by him, it was not open to the plaintiff to do a *volte-face* and come up with a new case for the purpose of maintaining the subject I.A. under Order 15-A CPC. These contradictory stands on the part of the plaintiff cannot be accepted. The trial Court lost sight of this fundamental principle while applying Order 15-A CPC to the case on hand. To compound this irregularity, the trial Court adopted the rent stated by the 1st defendant in its own suit as the basis for directing payment of rentals. If this rate is to be accepted and acted upon, it would mean that the plaintiff would have to concede the claim of the 1st defendant in its own suit. This aspect of the matter also seems to have been lost sight of by the trial Court.

Reliance placed by Sri D.V.Seetha Rama Murthy, learned senior counsel, upon **PRAFUL MANOHAR RELE V/s. KRISHNABAI NARAYAN GHOSALKAR**¹ is of no avail as the plaintiff in that case sought eviction of the defendant under the alternative pleas of a

¹ Civil Appeal No.50 of 2014 dated 03.01.2014

license or a tenancy. The Supreme Court held that there was no contradiction between these alternative pleas and that they were no different from each other. The same cannot be said of the suit claim of the plaintiff in the present case that the 1st defendant had illegally encroached upon the suit schedule property and his self-serving alternative and totally inconsistent plea in the subject I.A.

Similarly, **SRINIWAS RAM KUMAR V/s. MAHABIR PRASAD**² does not further the case of the plaintiff as the Supreme Court held therein that a plaintiff may make two or more inconsistent sets of allegations and claim relief thereunder in the alternative. In the present case, the suit claim of the plaintiff does not reflect the alternative plea advanced in the subject I.A. That apart, this decision related to grant of a decree based upon such alternative pleas by the plaintiff and did not pertain to inconsistent stands being adopted by a plaintiff for the purpose of securing interim relief on grounds totally contradictory and contrary to his suit claim.

NAJAMUDDIN KAZI V/s. MOHD. ABDUL AZIZ³, relied upon by Sri D.V.Seetha Rama Murthy, learned senior counsel, on the other hand, squarely settles the issue as this Court observed therein that Order 15-A CPC applies only when the tenancy is admitted or where the circumstances are such that they positively show that the plaintiff can be said to have become the owner/landlord of the property and the defendant can be said to have become his tenant by operation of law. In the present case, the plaintiff categorically asserted that there is no tenancy and inferring such a tenancy, owing to the 1st defendant's claim, would run counter and be fatal to the suit claim for compensatory damages on a day-to-day basis.

² AIR 1951 SC 177

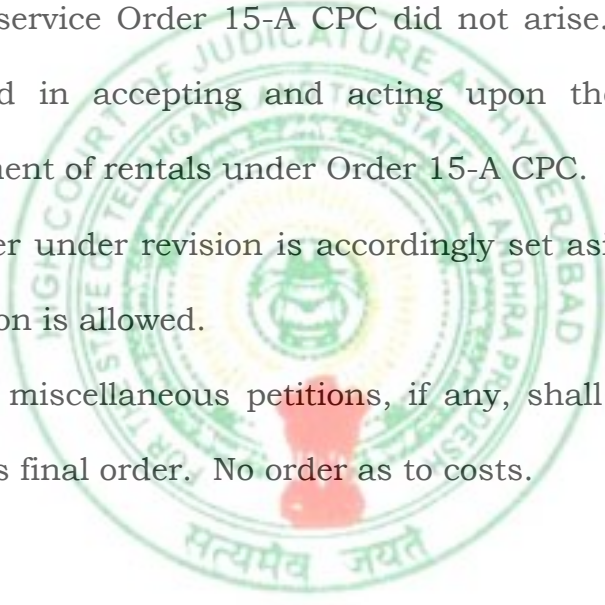
³ 2013 (6) ALT 23

The other decisions relied upon Sri D.V.Seetha Rama Murthy, learned senior counsel, relating to attornment are wholly irrelevant as the plaintiff does not admit a tenancy having been created by his mother in favour of the 1st defendant, whereby he can claim to have stepped into her shoes under the gift deed allegedly executed by her in his favour.

On the above analysis, be it viewed from any angle, the I.A. filed by the plaintiff under Order 15-A CPC was not maintainable in the light of the plaint averments. When the plaintiff denied the very existence of a landlord-tenant relationship, the question of his pressing into service Order 15-A CPC did not arise. The trial Court therefore erred in accepting and acting upon the said I.A. and directing payment of rentals under Order 15-A CPC.

The order under revision is accordingly set aside and the Civil Revision Petition is allowed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

23rd FEBRUARY, 2017

**L/R copy to be marked -Yes
B/o PGS**