

HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.4217 of 2017

ORDER

The revision petitioners 2 to 4 were the unsuccessful respondents therein. Revision sole respondent was in fact the petitioner in R.C.No.202 of 2009 maintained against late Smt. K.Sudama (since died).

2. The R.C.No.202 of 2009 was filed by the revision respondent Sri K.Somireddy against Smt. K.Sudama for eviction of said K.Sudama from the residential premises bearing municipal No.3-5-992(old 6304) of Narayanaguda, Hyderabad admeasuring 100sq.yards on the grounds of willful default, acts of waste, bonafide personal use and occupation and denial of title. The learned Rent Controller by order dt. 28.12.2010 granted eviction of the respondent within two months to evict. Before the Rent Controller besides the petitioner Somi Reddy one Shivani was examined as P.Ws. 1 and 2 and got marked Exs.P.1 to P.23 and late Sudhami sole respondent of the petition was examined as R.W.1 and got marked Exs.R.1 to R.25.

3. It is impugning said eviction order, as Sudama died after eviction order passed, her legal heirs filed R.A.No.64 of 2011 against the so called landlord K.Somi Reddy. The appeal was since ended in dismissal by order dt.29.06.2017

confirming the order of the Rent Controller, they maintained the present revision.

4. The factual matrix of the case in brief is that the leasehold premises referred supra of 100 sq.yards was purchased by the eviction petitioner from one D.Harbans Parsad vide registered sale deed No.2759,dt.10.10.2007 and the respondent Smt. K.Sudama was continued since prior to said purchase as a tenant under the said Parshad and his late father and that after said sale transaction, the tenancy was attorned and she was paying rents to said Somi Reddy only. It is also averred about the construction of the building from the approved MCH permission dt. 17.04.1968. According to the petitioner-Somi Reddy after said purchase in 2007, his name is mutated in municipal records and the original rent the respondent was paying after October, 2007 was at Rs.400/- per month. It is his version that he demanded the respondent-K.Sudhami for self-occupation for his son who is unable to travel from Medchal being a Government employee (Sub Inspector of Police) in the city. Said K.Sudhami filed O.S.No.859 of 2008 before the X Junior Civil Judge, Hyderabad for perpetual injunction claiming she is owner of the property and said Somi Reddy is trying to dispossess her without any right and obtained in I.A.No.81 of 2008 temporary injunction not to evict on 06.01.2009. She cause manipulated records in

electricity department and from January, 2008 she was not paying rents by committing willful default and by denial of title. It is also averred that respondent has been digging floor and damaging sewerage and drainage pipes removing existing structure though she got own residential house at Uppal that was let out to third parties by her. For these reasons he claimed eviction.

5. Said K.Sudama filed counter running in 12 paras of 6 pages by denial of jural relationship of landlord and tenant and title of the petitioner-Somi Reddy, claiming that her father late Atchaiah purchased the petition schedule premises about 60 years back for less than Rs.100/- under unregistered sale deed and has been staying therein and the sale deed in the course of time brittled into powder. She also denied about owning any residential house at Uppal and letting out to third parties. It is also contended that the petitioner is aware of her ownership and his vendor has no title and there is no any jural relationship for the petitioner's-vendor and the respondent-K.Sudhami even to claim under the alleged purchase any right or attornment of alleged tenancy. She also denied about any payment of rent much less of Rs.400/- per month for some time alleged non-payment later for any willful default therefrom saying she is in possession in her own right since her father's time and never as a tenant under the petitioner-Somi Reddy and

his vendor or predecessors. It is also denied his alleged title or alleged acts of waste. Thereby sought for dismissal of the eviction petition.

6. In the course of evidence, the petitioner-Somi Reddy reiterated his version by denying the counter version of the respondent by alleging tenancy and liable for eviction on the grounds urged supra among Exs.P.1 to P.23 relied as referred supra of which Exs.P.1 to P.20 marked through him of which Ex.P.1 registered sale deed dt. 10.10.2007, Exs.P.2 and P.3 are the copy of Urdu 4th Urban 1348 F and its translation, Ex.P.4 MCH permission dt.17.04.1968. Ex.P.5 rental agreement,dt.19.04.1968, Ex.P.6 lease deed, dt.01.02.1982. Ex.P.7 electricity bill, Ex.P.8 municipal Tax bill, Ex.P.9 letter issued by MCH, dt. 25.02.2008, Exs.P.10 to P.14 are the plaint and written Statement in O.S.No.857 of 2008, affidavit, counter and the order of injunction in I.A.No.81 in O.S.No.857 of 2008, Ex.P.15 FIR, dt.27.11.2008 and Exs.P.16 to P.20 so called rent receipts, which no way refers the name of the petitioner-Somi Reddy, Ex.P.21 judgment in O.S.No.859/08, Ex.P.22 order in O.P.No.623 of 1990,dt.01.03.1993 and Ex.P.23 receipt dt.03.11.2010 issued by the E.O. Boduppall gram panchayat. P.W.2 Shivani, daughter of Vendor-Harbans Parshad of P.W.1-Somi Reddy. The respondent K.Sudhami in the eviction petition as R.W.1 deposed in support of her

version by denying the claim of the petitioner in the eviction petition and among Exs.R.1 to R.25 referred supra, the Ex.R.1 copy of deposition in O.S.No.859 of 2008, death certificate dt.20.12.1982, wedding invitation,dt.13.06.1983, Exs.R.4 and R.5 progress reports, Ex.R.6 copy of petition filed by Government, Ex.R.7 plan issued by SLR, Hyderabad, Ex.R.8 Certified copy of Town Survey Register extract, dt. 13.09.2010. Exs.R.9 to R.12 electoral rolls of 1984,93,95 and 99, Ex.R.13 certified copy of Judgment and decree in O.S.No.1287 of 2005, Ex.R.14 copy of passport, Ex.R.15 copy of ration card, Ex.R.16 receipt for payment of telephone bill, Ex.R.17 electricity bill, Ex.R.18 community certificate, Ex.R.19 medical certificate, Ex.R.20 copy of FIR No.32 of 2009, Exs.R.21 to R.25 are copies of complaints made to the District Collector, Commissioner of Police and DGP in 2009-10. So far as the petitioner's title over the property concerned, Ex.P.1 sale deed filed and daughter of the vendor of the petitioner, is examined as P.W.2 and Ex.P.2 and its translation covered by Ex.P.3 is the source of title of the ancestors of P.W.1's vendor of 1348 fasili. Apart from it, Ex.P.4 MCH permission, dt.17.04.1968 also filed. Mere proof therefrom of P.W.1-petitioner as owner of the property is not sufficient in seeking eviction of said Sudhami by maintaining rent control case without showing jural relationship of landlord and tenant. Among the Exs.P.1 to

P.23 referred supra, Ex.P.16 to P.20 rent receipts shows issued in the name of Harbans Parshad and amounts shown received by K.Prabhakar. In fact, in the petition averments, it is stated from date of purchase in October, 2007, the respondent was paying to the petitioner rent of Rs.400/- per month till December, 2008. In fact, in the early 2008 itself, the suit O.S.No.859 of 2008 filed and temporary injunction dt.06.04.2008 obtained. Suffice to say the alleged payment of rent much less at Rs.400/- per month from October, 2007 till December, 2008 by respondent to the petitioner of the eviction petition on its face untrue. With reference to it, coming to the receipts which show even during November, 1982 and onwards of rent Rs.600/- per month that was being collected by K.Prabhakar from the premises covered by the petition schedule in question with door No.3-5-992. There is a correction in one of the rent receipts of 02.11.1983 of Rs.600/- made to Rs.400/- whereas subsequently on 03.02.1984 mentioned as Rs.600/- for January, 1984 and one of the rent receipts, dt. 02.05.1986 shown the rent of 625/- for the premises. Thus, there is no consistency in the receipts and even to say in almost all the receipts in some no signatures and in some one K.Prabhakar signed. Whereas, some of the receipts of February, 1991, issued in the name of Harbans Parsad as rent for Rs.400/-, there is signature of Sudama-R.W.1. No

doubt she disputed her signature by denying the same so also another receipt, dt.03.02.1991 for Rs.400/- and on 02.06.1991 for Rs.400/- and 02.03.1991 for Rs.400/- with signatures. So far as 02.02.1993 signature concerned, it appears not tallying with the other signatures, dt.02.06.1991 for Rs.400/- on 02.03.1991 for Rs.400/- and 03.02.1991 for Rs.400/-. The petitioner did not even sought for sending these signatures if at all that of her when she is disputing, to any handwriting expert for comparison and opinion with specimen signatures and any available admitted signatures.

7. In this factual scenario if at all she is not the tenant as claimed and owner as of right as claimed what is the material she placed reliance requires for consideration of her case. No doubt, in her entitlement to the defence with positive defence and not mere denial of the right of the landlord and she has also to establish once the petitioner-Somi Reddy is able to establish his title and right over the property and she did not file the so called unregistered alleged sale deed for the property 60 years back in the name of her father in her very say of brittled and made to powder. She at least has to file property tax if any paid and any municipal assessment in the name of her or her father and any permission obtained from the Municipality for the construction of the house. She did not file any such record

among Exs.R.1 to R.25. The crux here is whether single electricity bill covered by Ex.R.17 or mentioning her name in the electoral rolls 1984 to 1999 and any payment of telephone bill while residing in that premises established any right of her own, that too, when the plaintiff able to establish preponderance of probabilities the entitlement, the burden shifts on to the respondent by independent right as owner of the property in claiming through her late father under so called unregistered sale deed of 60 years back even to set up any animus with adverse possession the document is material, at least mutation in her name or in her late father is material that is now no doubt lacking herein. In the cross-examination of P.W.1-petitioner by the respondent, the suggestions are given no doubt of she is not the tenant and she is no way concerned with the so called alleged rent receipts and the signatures not that of her. He deposed that he does not know whether Government filed Land Grabbing Case against Shiva Prasad and she deposed about the suit filed for partition between the son and daughter of Shiva Parshad decree (covered by Ex.P.22 and P.23). P.W.2 evidence in the cross-examination is that she is only daughter of Harbans Parshad, vendor of the petitioner-Somi Reddy, and denied that she was adopted daughter of him. What she stated is her father told about her grandfather was the owner of the

property and she does not know whether it originally belongs to Government and Government filed any Land Grabbing Petition against her grandfather and she has no personal knowledge regarding leasing out of the portions of the two various tenants by her grandfather and denied the suggestion of the respondent-K.Sudama is a tenant. In fact even from the suggestions, it is clear of the respondent's grandfather and great grandfather occupied the property that belongs to the Government covered by the Land Grabbing case and there was also a partition suit in O.S.No.1285/87 suggested to her by the respondent to show there is at least possessory title in favour of the P.W.1's vendor over the property which is not so far as the respondent concerned for no scrap of any document showing possession and enjoyment. It is not even her case that she was not a tenant but in unlawful possession in her own right by perfecting the title by adverse possession against the P.W.1's predecessor in title in disputing the jural relationship but not claiming any right of purchase under registered sale showing document if any existence. Though it is to set up the animus for adverse possession to any implied plea for no scrap of paper for that much less any period in the name of her father that cannot be given credence. Coming to the evidence of R.W.1-K. Sudama supra with reference to the documents in her cross-

examination she deposed that as per Exs.R.13 judgment in O.S.No.1287 of 2005, as the case may be Supra Smt. Urmila Devi Jaiswal was the owner of the property in question to say that her father purchased the property from him. She did not file any scrap of paper and even a party much less her father in that suit much less by any impleadment by opposing the partition if at all there is any iota of truth of her father purchased under unregistered document 60 years back. She deposed categorically in her cross-examination of none of the documents under Exs.R.1 to R.25 supra show any ownership over the petition schedule property to her so far as Land Grabbing O.P.No.Ex.P.22 maintained by the Government against the Shiva Parshad Jaiswal that was admittedly ended in dismissal by judgment,dt.01.03.1993. Even from Ex.R.8 Shiva Parshad Jaiswal was occupier of the petition schedule property which is the Town Survey Report and further there is a suggestion to her of to the western side of the petition schedule, there is property of Shiva Parshad Jaiswal of which the Ex.R.8 relates and not to the petition schedule property even. As referred supra, she denied her signature on some of the rental receipts shown that of her, however admitted that her late brother Prabhakar worked in the Government service though denied the name of Prabhakar in some of the receipts is said brother of her who paid rents

and signed in any receipts. In fact, any receipt even signed the landlady as to pass receipt of rent to the tenant and not vice versa. However, the fact remains three of the receipts allegedly contained her signatures among the Exs.P.16 to P.20 not even sought for sending to the handwriting expert. However, the fact remains ultimately that she could not prove any iota of right over the property much less of her father or brother over the property and the record shows her claim is baseless of her father purchased 60years back with no scrap of paper as discussed supra and not even her specific case of claiming adverse possession under the vendor of the petitioner and once the property is purchased from the vendor by the petitioner under Ex.P.1 registered sale deed, there is statutory attornment even. It is hardly believable in the factual scenario of her relation is but for tenant otherwise that too even in maintaining the suit, what was the relief granted is not to evict except through due process of law and not by granting any injunction by recognizing any right in her favour. It is therefrom when in the Courts below in the concurrent findings came to the conclusion of fresh in mind of the facts by the learned Rent Controller in recording evidence by appreciation of existence of jural relationship of landlady and tenant and liable for eviction confirmed by the alleged appellate Court

for this Court while sitting in Revision, it is difficult to interfere.

8. Accordingly and in the result, the revision is disposed of by not interfering with the concurrent findings of the Courts below in ordering eviction of the revision petitioners-the Legal Representatives of late Sudhami, however and by granting one year time from today on or before i.e. by 30.11.2018 to vacate, else later to evict them from the premises for securing alternative accommodation meantime, subject to payment of use and occupation charges of Rs.1000/- per month and in the case of non-compliance in vacating the premises by that time, to execute by the revision respondent-Somi Reddy.

Consequently, miscellaneous petitions, if any, pending in the revision, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:28.11.2017

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