

**IN THE HIGH COURT OF JUDICATURE AT HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADERSH**

**Civil Revision Petition Nos.1740, 1753, 1767, 1768, 1769 and
1770 of 2017**

Between:

Malik Patel, S/o Jamandas Raghvajibhai Bhimani,
Indian, aged about 40 years, Occ: Business,
R/o Vijayawada

... Revision Petitioner

Vs.

Penubothu Padmaja, W/o Venkata Lakshmi,
Suresh, Indian, aged about 45 years, House
Wife, R/o Door No.41-18-16, Chennu Tirumala
Rao Street, Krishna Lanka, Vijayawada.

..... Respondent

ORDERS PRONOUNCED ON : 21-09-2017

HON'BLE SRI JUSTICE : **V. RAMASUBRAMANIAN**

1. Whether Reporters of local
Newspapers may be allowed to see
the Judgments? : Yes
2. Whether the copies of judgment
may be marked to Law Reporters/
Journals? : Yes
3. Whether their Ladyship/Lordship
wish to see the fair copy of the
judgment? : Yes

C.R.P.Nos.1740, 1753, 1767,
1768, 1769 and 1770 of 2017

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

**+ Civil Revision Petition Nos.1740, 1753, 1767, 1768, 1769 and
1770 of 2017**

% 21-09-2017

C.R.P.No.1740 of 2017

Malik Patel, S/o Jamandas Raghvajibhai Bhimani,
Indian, aged about 40 years, Occ: Business,
R/o Vijayawada

... Petitioner

Vs.

\$ 1) Penubothu Padmaja, W/o Venkata Lakshmi,
Suresh, Indian, aged about 45 years, House
Wife, R/o Door No.41-18-16, Chennu Tirumala
Rao Street, Krishna Lanka, Vijayawada.

... Respondents

C.R.P.No.1753 of 2017

Nilesh, S/o Vallabhai Patel, Indian, aged about 45 years,
Occ: Business, R/o Vijayawada

... Petitioner

Vs.

\$ 1) Penubothu Padmaja, W/o Venkata Lakshmi,
Suresh, Indian, aged about 45 years, House
Wife, R/o Door No.41-18-16, Chennu Tirumala
Rao Street, Krishna Lanka, Vijayawada.

... Respondents

C.R.P.No.1767 of 2017

M. Nancharaih, S/o Kakuleswara Rao,
Indian, aged about 65 years, Occ: Business,
R/o Vijayawada

... Petitioner

Vs.

\$ 1) Penubothu Padmaja, W/o Venkata Lakshmi,
aged about 45 years, House Wife, R/o Door
No.41-18-16, Chennu Tirumala Rao Street,
Krishna Lanka, Vijayawada.

... Respondents

C.R.P.Nos.1740, 1753, 1767,
1768, 1769 and 1770 of 2017

C.R.P.No.1768 of 2017

#P. Sri Hari, S/o Krishna Rao, Indian, aged about
52 years, Occ: Employment R/o Vijayawada

... Petitioner

Vs.

\$ 1) Penubothu Padmaja, W/o Venkata Lakshmi,
Suresh, Indian, aged about 45 years, House
Wife, R/o Door No.41-18-16, Chennu Tirumala
Rao Street, Krishna Lanka, Vijayawada.

... Respondents

C.R.P.No.1769 of 2017

#P. Sri Hari, S/o Krishna Rao, Indian, aged about
52 years, Occ: Employment R/o Vijayawada

... Petitioner

Vs.

\$ 1) Penubothu Padmaja, W/o Venkata Lakshmi,
Suresh, Indian, aged about 45 years, House
Wife, R/o Door No.41-18-16, Chennu Tirumala
Rao Street, Krishna Lanka, Vijayawada.

... Respondents

C.R.P.No.1770 of 2017

P. Kanaka Durga, S/o Ranga Rao, Indian,
aged about 50 years, Occ: Business, R/o Vijayawada

... Petitioner

Vs.

\$ 1) Penubothu Padmaja, W/o Venkata Lakshmi,
Suresh, Indian, aged about 45 years, House
Wife, R/o Door No.41-18-16, Chennu Tirumala
Rao Street, Krishna Lanka, Vijayawada.

... Respondents

C.R.P.Nos.1740, 1753, 1767,
1768, 1769 and 1770 of 2017

! Counsel for the Petitioner: Mr. L. Ravichander,
Senior Counsel

Counsel for Respondents 1 to 4: Mr. V.S.R. Anjaneyulu
Learned counsel

< Gist:

> Head Note:

? Cases referred:

Nil.



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**Civil Revision Petition Nos.1740, 1753, 1767, 1768, 1769 and
1770 of 2017****COMMON ORDER:**

These Civil Revision Petitions are filed by tenants, challenging the dismissal of their applications filed under Section 47 of the Code of Civil Procedure, 1908, in the course of execution of the orders of eviction passed by the Rent Controller.

2. Heard Mr. L. Ravichander, learned senior counsel appearing for the petitioners and Mr. V.S.R. Anjaneyulu, learned counsel appearing for the respondent-landlady.

3. The respondent-landlady filed separate petitions for eviction in R.C.C.Nos.8, 9, 10, 11, 13 and 14 of 2007, against the petitioners herein, praying for eviction under the provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The petitions for eviction were hotly contested by the petitioners herein and eventually the Rent Controller passed orders of eviction on 22-03-2011.

4. It is pertinent to note that the petitioners in these revision petitions were represented by counsel before the Rent Controller and they contested the rent control proceedings, by effectively participating in the proceedings and adducing documentary evidence.

5. It is relevant to note that the ground on which eviction was sought, was that the petitioners herein were guilty of wilful default in payment of monthly rents for several months. The petitioners herein

contested the eviction proceedings by claiming that the monthly rents were paid regularly to the brother of the respondent's husband, who was a joint owner of the entire property; that the brother of the respondent's husband was also residing in the same building; that the brother of the respondent's husband by name Pardhasaradhi was issuing rental receipts; that there are disputes between the respondent, her husband and his brother and that the respondent was not at all the owner of the property so as to seek eviction.

6. In other words, the defence taken by the petitioners herein in the eviction proceedings was two fold namely a) that they were paying the rents to the joint owner of the property and were taking the receipts and (2) that the respondent was not the owner of the petition schedule property.

7. After taking a positive defence that they have been paying the rents regularly to the respondent's husband's brother, the petitioners, for reasons best known to them, failed to get into the witness box. The petitioners did not adduce any oral evidence. On the other hand, the petitioners filed 3 documents as exhibits on their side. None of these documents had any relevance to the defence taken by them in the counter.

8. In an interesting twist, the petitioners, after claiming in the counter statement that they were paying the rents to Pardhasaradhi (brother of the respondent's husband), started claiming in the course of arguments that they were paying the rents to one Mr. Vangaveeti Mohana Ranga Rao, who had allegedly filed a suit for specific

performance. But the petitioners did not even choose to examine the said Vangaveeti Mohana Ranga Rao as a witness on their side.

9. Therefore, the Rent Controller ordered eviction and the petitioners appear to have filed a regular appeal with a delay. The delay was not condoned, and hence, orders of eviction attained finality. Thereafter, the respondent filed petitions for execution of the decrees of eviction, in E.P.Nos.46, 47, 48, 49, 50 and 51 of 2012. The petitioners seem to have employed all kinds of tactics during the execution proceedings. If the original proceedings for eviction had taken 4 years from 2007 to 2011 to come to a conclusion, the execution proceedings have now taken 5 years and the curtain could not still be drawn.

10. In the execution proceedings, the petitioners set up one Mr. V. Mohana Ranga Rao (to whom the petitioners claimed to have paid rents) to file a petition under Section 23 (7) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961. But the Rent Controller dismissed the same on 30-04-2015. The said V. Mohana Ranga Rao filed a revision in C.R.P.No.3200 of 2015 and obtained stay of execution of the decree in the first instance. But, ultimately, the C.R.P. was dismissed by an order dated 06-10-2015.

11. As against the order of the single Judge, Mr. V. Mohana Ranga Rao filed S.L.P. (Civil) No.38 of 2016. The Supreme Court dismissed the S.L.P. after recording an undertaking from V. Mohana Ranga Rao that he would vacate the premises within 3 months. The

undertaking given by V. Mohana Ranga Rao on 25-03-2016 worked itself out, after the expiry of 3 months.

12. Therefore, the Rent Controller ordered delivery and issued delivery warrant. Thereafter, the petitioners jumped into the fray and filed applications in E.A.Nos.109, 110, 111, 112, 114 and 135 of 2016 under Section 47 CPC praying for the dismissal of the execution petitions, on the ground that the Rent Controller did not have jurisdiction to entertain the eviction petitions in the first instance. Finding the applications under Section 47 CPC to be an abuse of process of Court, the Executing Court dismissed those applications. Therefore, the tenants have come up with the above revisions.

13. The only ground raised by the petitioners in their applications under Section 47 CPC is that the respondent and her husband respectively purchased the northern and southern sides of the petition schedule property along with the old structures standing thereon, under a sale deed dated 13-10-1999 and that the respondent as well as her husband got constructed a building by joining both portions together in the year 2000 and that in view of Section 32 (b) of the Rent Control Act, the provisions of the Act could not be invoked in respect of a building constructed within a period of 15 years.

14. In other words, the contention of the petitioners is that the building in question was constructed only in the year 2000 and that therefore, in the year 2007, the building continued to be a building

exempted from the applicability of the provisions of the Rent Control Act.

15. But even admittedly, the above contention that the respondent and her husband bought two sites in the year 1999 and put up a construction in the year 2000, was not raised in the counter filed by the petitioners herein before the Rent Controller. As stated earlier, the petitioners neither pleaded this nor sought to establish this in evidence. The petitioners pleaded in their counter statement that they were paying rents to one Pardhasaradhi, the brother of the respondent's husband. But in the course of trial, the petitioners pleaded that they were paying rents to one V. Mohana Ranga Rao, who had filed a suit for specific performance.

16. After the dismissal of the eviction petitions, the petitioners did not pursue the matter further. On the contrary they set up the said V. Mohana Ranga Rao to file a claim petition. He went up to the Supreme Court, filed an affidavit of an undertaking before the Supreme Court and threw his hands up. Thereafter, the petitioners have come up with a new pleading, in the applications under Section 47 CPC.

17. Placing heavy reliance upon the decision of the Supreme Court in **Sushil Kumar Mehta v. Gobind Ram Bohra**¹, it is contended by the learned senior counsel for the petitioners that if a decree is passed by a Court, which inherently lacked jurisdiction to entertain the suit, the said decree can be assailed even in execution. In paragraph-26 of the judgment, the Supreme Court held that a

¹ (1990) 1 Supreme Court Cases 193

decree passed by a Court, which inherently lacked jurisdiction, is a nullity and that the invalidity of such a decree can be set up whenever it is sought to be enforced or executed.

18. I have carefully considered the only ground on which the petitioners filed applications under Section 47 CPC and I have also considered the purport of the judgment of the Supreme Court in **Sushil Kumar Mehta**. But, I do not think that the petitioners can be heard to raise all the above contentions.

19. As I have pointed out earlier, the respondent filed petitions for eviction on the simple ground of wilful default in payment of rents. The petitioners herein filed counter statements in all the eviction petitions merely contending that they were paying rents to the brother of the respondent's husband. Admittedly, the respondent was estranged from her husband and the petitioners first wanted to encash upon the same. Therefore, they pleaded that rents were paid to the brother of the respondent's husband. The date of construction of the portions let out to the petitioners was never in issue before the Rent Controller. The averments pleaded in the affidavit filed by the petitioners in support of their applications under Section 47 CPC, to the effect that the respondent and her husband purchased the two sites along with old structures under a sale deed dated 13-10-1999 and that they demolished the same and put up a construction in the year 2000, were not pleaded by the petitioners in their counter.

20. It is true that the provisions of the Rent Control Act would not apply to newly constructed buildings for a period of 15 years. It must be pointed out that the Rent Control Act is a beneficial

legislation in favour of tenants. The law makers, in their wisdom, wanted to keep newly constructed buildings out of the purview of the Rent Control Act, not with a view to confer a benefit upon the tenants, but with a view to enable the landlords to enjoy the property without any statutory indictment.

21. Section 32 (b) of the Rent Control Act is actually an exemption. If the Rent Control Act is a beneficial legislation in favour of the tenant, the exemption under Section 32 (b) is a benefit conferred upon the landlord. Therefore, it is natural that a landlord would certainly take advantage of the exemption under Section 32 (b) of the Act to go to civil Court for recovery of possession, if the building was less than 15 years old. For getting an order of eviction before the Rent Controller, the landlord has to prove any one of the preconditions. The rigours of the Rent Control Act are so heavy that a landlord, who is entitled to the benefit of exemption, will naturally take advantage of the same. In a Civil Court, all that is required to be established is the compliance with Section 106 of the Transfer of Property Act, 1882.

22. Keeping the above fundamental principles in mind, if we come back to the case on hand, it could be seen that the entire contention of the petitioners revolves around new pleadings. These pleadings were not made by the petitioners in their counter statements to the eviction petitions. The question whether the Rent Controller inherently lacked jurisdiction or not, cannot be determined independent of the facts now newly pleaded. The decision of the Supreme Court in **Sushil Kumar Mehta** will apply to cases where,

without any enquiry, one can come to a conclusion that the Court inherently lacked jurisdiction. But in the case on hand, it is not possible to come to the conclusion that the Rent Controller inherently lacked jurisdiction.

23. It is only if the new facts now pleaded by the petitioners in their applications under Section 47 CPC are taken on record and evidence is adduced and a decision taken afresh, that the question of applicability of Section 32 (b) of the Rent Control Act could be decided.

24. It is fundamental that a person, who was a party to the original proceedings and who set up a completely different case in the original proceedings, cannot plead new facts in an application under Section 47 CPC and claim that the decree was a nullity, on the basis of the new facts so pleaded. Therefore, the Executing Court was right in rejecting the petitions under Section 47 CPC.

25. More over, there are certain disturbing facts in this batch of revisions. The petitioners herein filed counter statements and contested the original proceedings for eviction, without questioning the jurisdiction of the Rent Controller and without even raising points that may lay the foundation for questioning the jurisdiction of the Rent Controller. The Rent Controller ordered eviction way back on 22-03-2011. The petitioners filed appeals, but the same were rejected in 2012. Execution Petitions were filed by the respondent as early as in the year 2012. Despite service of notices, the petitioners kept quiet and it was one Mr. V. Mohana Ranga Rao, who filed an application in the execution proceedings claiming to be in

possession of the petition building. Interestingly, the name of V. Mohana Ranga Rao found a place in the original order of eviction, since it was claimed by the petitioners during trial that they were paying the rents to him, as he had filed a suit for specific performance of an agreement of sale. But the rent controller rejected the theory of payment of rents to Mohana Ranga Rao. This Mohana Ranga Rao, whose name was mentioned by the petitioners herein during the trial of the eviction proceedings, suddenly surfaced at the time of execution and filed an application. His application was dismissed in the year 2015. The Civil Revision Petition filed by him was dismissed by this Court and in the Supreme Court, he filed an affidavit of undertaking. After the period stipulated in the affidavit of undertaking expired, the petitioners jumped into the band wagon and filed the present applications under Section 47 CPC.

26. Therefore, it is a clear case of the petitioners attempting to play a fraud upon this Court and also on the Supreme Court through a proxy litigation for 5 years by setting up V. Mohana Ranga Rao. In fact, the said V. Mohana Ranga Rao is clearly guilty of contempt of the Hon'ble Supreme Court, since he gained 3 months time from the Supreme Court by filing an affidavit of undertaking to the effect that he is in possession and that he would deliver vacant possession in 3 months. The petitioners may also be guilty of contempt of the hon'ble Supreme Court, for attempting to either to sub-serve the cause of V. Mohana Ranga Rao or to subserve their own cause by setting up Mohana Ranga Rao.

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Therefore, the Civil Revision Petitions are dismissed with costs of Rs.10,000/- (Rupees ten thousand only) in each of these revisions. The Executing Court is directed to take all steps to deliver vacant possession of the property to the respondent and file a report before this Court by 16-10-2017.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 21-09-2017

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