

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
+ CIVIL REVISION PETITION Nos.4204, 4216, 4205 and 4212 of
2017

% Dated 13.12.2017

Smt. A.P.Leela

....Petitioner

VERSUS

\$ Sri Nakkala Kishore Yadav

... Respondent

! Counsel for Petitioner : Sri A.Venkatesh

^ Counsel for Respondents : Sri R.A.Achuthanand

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 1971 (1) An.W.R.65
2. (2010) 11 SCC 441
3. (2003) 8 SCC 752
4. (2006) 5 SCC 353
5. (2016) 3 SCC 78
6. (1964) 1 SCR 259
7. AIR 1973 AP 1
8. 1995 (2) ALT 61
9. 2012 (2) ALD 104
10. AIR 2002 AP 52
11. (2014) 9 SCC 78



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

**CIVIL REVISION PETITION Nos.4204, 4216, 4205 and 4212 of
2017**

Between :

Smt. A.P.Leela

....Petitioner

VERSUS

\$ Sri Nakkala Kishore Yadav

... Respondent

DATE OF JUDGMENT PRONOUNCED: 13.12.2017

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.4204, 4216, 4205 and 4212 of 2017

COMMON ORDER :

C.R.P.Nos.4204 and 4216 of 2017 maintained by the respondent-tenant-Smt.A.P.Leela of R.C.No.149 of 2008, whereas C.R.P.Nos.4205 and 4212 of 2017 are similarly filed by the respondent-tenant-Sri N.Sunder Raj of R.C.No.148 of 2008. The respective alleged landlords are by names N. Kishore Yadav in R.C.No.149 of 2008 and N.Sudarshan Yadav in R.C.No.148 of 2008.

2. It is the eviction petitions under A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act') were maintained on the grounds of personal requirement, willful default in payment of rent and denial of title. The Rent Controller in both the petitions from the respective evidence after **contest** from full-fledged trial/enquiry having held that the dispute as to identity raised by the tenant is not tenable, however, the respective landlord could not prove that there is jural relationship of landlord and tenant in seeking eviction. Consequently, against the dismissal orders from the so-called relationship landlord-tenant must pre-exist, even property identity not in dispute, the landlord-N.Kishore Yadav maintained R.A.No.88 of 2012 against dismissal of the eviction petition in R.C.No.149 of 2008 and tenant maintained R.A.No.90 of 2012 and the landlord-N. Sudershan Yadav maintained R.A.No.89 of 2012 against dismissal of

the eviction petition in R.C.No.148 of 2008 and tenant maintained R.A.No.91 of 2012 against the finding of the property identity tallied.

3. The learned appellate Tribunal in the respective disposal of the appeals of R.A.Nos.88 and 92 of 2012 together and similarly R.A.Nos.89 and 91 of 2012 together by dismissing the appeals of the tenant allowed the appeals of the respective landlords, holding that what the Tribunal held of the identity of the property tallied is correct and there is a jural relationship from the landlord proved the ownership of the property and contention of the tenant that there is no jural relationship and it is ancestral property respectively are untenable, thereby and from the very pleading in the eviction petition vis-à-vis the evidence on record, the tenant is liable for eviction.

4. Impugning the said appellate Court's judgments, the respective two tenants filed the above four revisions.

5. Heard both sides in all the four revisions for common disposal and perused the material on record.

6. So far as the eviction petition averments respectively concerned, it is in relation to Door No.1-13-68 to 70. The respective eviction petition schedule also describes the same. Ex.P.1-sale deed respectively in favour of the respective landlords show in the schedule also the same Door No. and refers as Old No.44. Among the respective petition averments, it is the claim that Dharmapuri Keshava Rao, who was the 3rd defendant even in the suit O.S.No.307 of 1958 covered by Ex.P.10-final decree, dated 13.08.1963 got the property

and he sold respectively under original of Ex.P.1 to the respective two eviction petitioners, so-called landlords. The respective averments in the eviction petitions show that for the respective petition schedule properties, the respondents and for the other three more properties R.Shanker, Prem Kumar and M.Sudarsha are the tenants. The said D.Keshava Rao, the vendor under Ex.P.1, introduced the tenants supra, to the respective petitioners, the vendees, and also directed the tenants to pay future rents to them respectively for the respective portions covered by the sale deeds and informed that the tenancy was oral. It is also mentioned regarding rent and the practice of not passing receipts and the tenant to bear the electricity and water charges, etc., It is further averred that there is a willful default and also bonafide requirement and there is a dental of title in the reply to the notice are liable to be evicted. The counter filed by the respective tenants are that the allegation of after sale in favour of the respective eviction petitioners by the vendor D.Keshava Rao, they attorned the tenancy or asked the so-called tenants to pay the rents to the vendees as owners is untrue and it is a concocted version and at no point of time the respective respondents accepted as tenants, much less agreed any payment of rents and said claim is false for they never the tenants and there was no any tenancy and there is no jural relationship between them and the claim of payment of rents is false. It is further averred that the respondent is in occupation of the property in own right as owner having inherited from the predecessor in title. In this

context, it is also necessary to refer to the exchange of notices prior to filing of the eviction petitions issued by the respective landlords to the respective tenants by describing the petition schedule property and the notices admittedly received by the tenants covered by the petition schedule property of Door No.1-13-68 to 70. There is no dispute on the identity of the property so far as that aspect concerned of the notices received when sent to the said address which is covered by the petition schedule and the sale deed schedule respectively and Ex.P.10-partition final decree refers to Old Door No.44 and also describes the location. The respective tenants issued reply, having acknowledged the legal notice covered by Ex.P.8-acknowledgments of addressed to Door No.1-13-68 to 70 of Old No.44 of Balamrai Village and the reply reads that the respondent to whom the notice sent is a tenant is denied for never a tenant to the property in question and venturing to give reply requires copy of the document through which the petitioner who issued the notice is claiming right and against the respondent as tenant and to furnish relevant available documents to enable to give a detailed reply. A re-joinder reply notice for that Ex.P.5 reply given to Ex.P.4 covered by Ex.P.8-acknowledgement, under Ex.P.6 sent by the landlord, which refers to the said denial not bonafide and the very notice contents are well explained of the relationship and ownership and the oral tenancy for which there is no document and so far as registered sale deed concerned in showing the title as owner document is sending by enclosing to the reply. It is not the case of any of the

two respondents alleged tenants that they did not receive that rejoinder reply covered by Ex.P.6. However, there is no further reply though in Ex.P.5 chosen to give a detailed reply after going through. The non giving of reply itself leads adverse inference under Section 3 of the Indian Evidence Act for no prudent man will keep quite without response, but for if at all there is any truth in the averments contained in the very notice as also held by this Court in **Chapala Hanumaiah Vs Kavuri Venkateshwarlu**¹, leave about same is also the proposition from para 15 of the Three-Judge Bench expression of the Apex Court in **Rangappa v. Sri Mohan**². In this background besides no denial of the identity of the property in the first reply and no denial on the identity of the property even in the counter as referred supra, what is for the first time urged in the grounds of revision so far as receiving of the legal notice or the rejoinder notice at the Door No.1-13-68 to 70 is for the postman of the area familiar and acquainted even though addressed to one door number, delivered at another door number and practically residing at Door No.1-13-44 or 44/2, as the case may be. That contention is propounded, in evidence with reference to counter though not specifically denied in the counter regarding the identity of the property, but for the claim of resident of 1-13-44/2 and in support of it only placed reliance of an incomplete document covered by Voters Enumeration List showing resident of Door No.1-13-44 or 44/2, as the case may be, in the year 1995. That

¹ 1971 (1) An.W.R. 65

² (2010) 11 SCC 441

voters enumeration list though even taken as its face value from the public document made as resident of that Door No.1-13-44/2, leave about to the sale deed covered by Ex.P.1 and the partition final decree covered by Ex.P.10 and the municipal assessments covered by Exs.P.11 to P.16 and in particularly in Ex.P.16 letter of cantonment board referring to old No.44 for the new numbers 1-13-68 to 70, even taken it relates to same property. From that leave apart from even if at all resident shown as resident of different door number so far as a tenant or not for the premises covered by 1-13-68 to 70 in question, cannot be disputed with reference to Ex.R.1 more particularly, from the notice received to that address with no reply and in the counter also that identity of the property covered by the petition schedule not disputed. It is the said conclusion with concurrent findings both the Courts arrived at of the dispute as to property at Door No.1-13-44/2 is different to the property at Door No.1-13-68 to 70 is untenable and it is the self same property. It is also for the fact as discussed including in the appellate Court's order besides the Rent Controller order of the admission in the cross-examination initially by the respondent and tried to wriggle out later. The contention in the grounds of revision that but for the *ipsy dixsy* self serving version of PW.1, the so-called owner, there is no other evidence, much less by examination of the owner of the sale deed; the said contention is also untenable, more particularly with reference to the said factual matrix and the evidence on record supra and with reference to Section 134 of the Indian

Evidence Act in deciding with reference to Section 3 of the Indian Evidence Act as to a fact is proved or not proved, as the case may be, once that is proved that too in a civil dispute only by preponderance of probability including in suit based on title or from denial of title as also held by the apex Court in **R.V.E.Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple**³. Further more, apart from the partition final decree covered by Ex.P.10, there is a registered sale deed covered by Ex.P.1 and the expression of the Apex Court in **Prem Singh and others v. Birbal and others**⁴, at para 27, it is clear that there is a presumption that a registered document is validly executed under a registered document, therefore, *prima facie* would be valid in law to the consideration of title and onus of proof, thus, would be on a person who leads evidence to rebut the presumption'. It is thus for the respondent-tenant if at all to dispute the title in relation to the petition schedule property covered by 1-13-68 to 70 in question that could not be rebutted. Now, it is the contention of the learned counsel for the revision petitioner by placing reliance on the expression of the Apex Court in **Damodar Lal v. Sohan Devi and others**⁵, which is a second appeal lis in definitely what is meant by perversity there observed from para 14 in nut shell that 'a finding of fact recorded by a Court can be held to be perverse if the finding has been arrived at by ignoring or excluding relevant

³ (2003) 8 SCC 752

⁴ (2006) 5 SCC 353

⁵ (2016) 3 SCC 78

material or by taking into consideration by relevant and inadmissible material and said finding if it is against the weight of evidence or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. Here, as discussed supra, the reasons given with concurrent findings by the Courts below are justified and nothing perverse that could be shown to arrive, much less to interfere, but for to concur with the said findings. Once such is the case, it is to consider whether the denial of ownership of the landlord by the tenant is bonafide or malafide or otherwise, as the case may be; before that, undisputedly, to sustain the eviction petition there must be existence of jural relationship of the landlord and tenant. The Apex Court Five-Judge Bench in **Om Prakash Gupta v. Rattan Singh and another**⁶ at para 4 observed that ‘the most important question that arises in determination in the case is whether or not the Rent Control Authorities had jurisdiction in the matter in controversy in the case’. In answering the same observed ‘ordinarily it is for the civil Courts to determine whether and, if so, what jural relationship exists between the litigating parties. But the Act has been enacted to provide for the control of rents and evictions of tenants, avowedly for their benefit and protection. The Act postulates the relationship of landlord and tenant which must be preexisting relationship. The Act is directed to

⁶ (1964) 1 SCR 259

control some of the terms and incidents of that relationship. Hence, there is no express provision in the Act (Delhi Rent Control Act 1958) empowering the Controller, or the Tribunal, to determine whether or not there is a relationship of landlord and tenant. In most cases such a question would not arise for determination by the authorities under the Act'. However, referring to this Act 1960, the Full Bench of this Court in **Changalal and others v. Narsingh Pershad**⁷ observed in para 9 referring to Section 10 of the Act that, 'only when the jural relationship of landlord and tenant exists between the parties, an eviction petition can be maintainable on any of the grounds mention therein. Unless that relationship exists either admitted or proved, the Rent Controller can have no jurisdiction to pass orders of eviction.

7. Mere assertion of the tenant does not oust the jurisdiction of the Rent Controller by referring to Section 10(1) of the Act, when the tenant denies the landlord's title and if the Rent Controller after enquiring in to the matter gives a finding that denial is bonafide, the jurisdiction ceases thereafter, but if the denial is found to be without foundation is liable to be evicted on any of the grounds mentioned in Section 10(2) of the Act. Thus, once the petition averments show right from the legal notice contest of existence of landlord-tenant relationship and there is no reply to the rejoinder to draw adverse inference against the tenant, if at all there is no jural relationship by

⁷ AIR 1973 AP 1

non giving of reply and even in the counter identity of the property not disputed and even the legal notice received when addressed to the premises in question where staying is proved that is not in dispute, the denial of title is not bonafide subject to existence of the jural relationship of landlord and tenant, if any.

8. Coming to that, the Rent Controller dismissed the eviction petition holding that there is no jural relationship of landlord and tenant that could be proved. Whereas the lower Appellate Court reversed the finding saying there exists a jural relationship. In this regard, the finding of the Rent Controller at para 17 is that the respondent so-called tenant never admitted the relationship at any point of time, thereby the petitioner has to establish the jural relationship and PW.1 testified of he received one month rent from July 2006, but no proof of document to show the same. PW.1 admitted that he does not have any document to show respondent paid rent and respondent is tenant. Said D.Keshava Rao, vendor to the petitioner, predecessor in title to the property as per the petitioner informed of he has to pay arrears of rent from July 2006 onwards but petitioner did not chose to examine that D.Keshava Rao to establish the same and letting out the premises to the respondent. Once above statement of PW.1 is clear of no document to show the relationship between the petitioner and respondent or the petitioner's predecessor in title and respondent, though respondent is in possession of the premises in question, cannot become a tenant. Hence, the point is

answered against the petitioner. Whereas, the finding of the first appellate Court in para 12 in answering on point No.3 is that from perusal of the evidence on record adduced before the Rent Controller, respondent though denied as not a tenant of the schedule property admitted of she does not know if her husband was residing in the schedule property as a tenant so far as R.C.No.149 of 2008 concerned, leave about equally in other, she admitted that she along with the other persons are residing in the compound as a tenant of D.Keshava Rao and that she does not know whether the appellant requested them to vacate the schedule property. She also stated at one point of her cross-examination that other persons namely, Prem Kumar, Shankar and Sudarshan, whom she referred as co-tenants in her earlier statement in evidence have vacated the petition schedule property. Thus, the fact that the respondent admitted of she along with others are the tenants of D.Keshava Rao, thereby she cannot now deny that as she is a tenant or the attornment of tenancy by D.Keshava Rao in favour of the Rent Control petitioner. It is there from concluded of there exists the jural relationship between the landlord and tenant. As referred supra, the respondent could not establish any entitlement over the property. It is not even a case of respondent of she is in permissive possession, not even with a claim of adverse possession, but for claiming in own right, for which there is no scrap of paper and RW.2 evidence is in this regard of no avail for nothing covered, but for if at all equally the *ipsy dixy* oral version of respondent as RW.1

with no documentary evidence other than Ex.R.1-Voters Enumeration List against documentary evidence placed reliance by the petitioners of Exs.P.1 to P.25 mostly referred supra, and it is there from once title of the petitioner as owner and in the cross-examination there are stray admissions as referred supra in the appellate Court's finding suffice to say, the revision petitioners are tenants even taken from the contentions raised in the revision. With reference to the expression of this Court in **K.P.Janakiram v. K. Suguna Bai**⁸, the Single Judge of this Court referring to Section 53 of the Transfer of Property Act and Section 10(1) of the Act, observed at para 13 last sub para unnumbered after extracting paragraph 11 of the lower appellate Court's judgment, the following 'This proposition of the lower appellate Court is totally untenable. It is not Law that whenever the landlord establishes title and tenant fails to prove the title pleaded by him, such a person shall be construed to be a tenant under the landlord. When the alleged tenant failed to prove his own title, it does not mean that he was a tenant under the owner. His possession could be in any other capacity like a mortgagee or a licensee or even a person in adverse possession'. Here, as referred supra, it is not the contention of the respondent tenant of either licensee or person in adverse possession or mortgagee, but for claiming in own right as if owner for which there is no scrap of paper and that could not be proved and the tenor of his evidence is even choosing to deny the title

⁸ 1995 (2) ALT 61

of the landlord originally having not given reply to the rejoinder notice covered by Ex.P.6 and the consequence as referred supra legally and even in the counter not denied specifically the identity of the property in question in his occupation that is also established from acknowledgment of the legal notice sent to that address covered by Ex.P.8 discussed supra and coming to this, once that is not even the case as owner and the petitioner proved as owner, the consequence follows that but for he is a tenant he could not continue in the premises in question for not his case otherwise. That inference can be drawn from the evidence on record with reference to Section 3 of the Indian Evidence Act, as one of the reasonable probability in arriving the conclusion, with reference to the attendant facts and circumstances supra. Even coming to the other expression of another Single Judge of this Court in **Habeebullah Khan v. Shaik Yousuf**⁹ in respect of denial of title, at para 12, it is observed that ‘any how, oral evidence cannot be given any credence. The appellate authority seems to have rightly held that there is a serious dispute with regard to the title. I am not inclined to consider the evidence of the respondent with regard to his claim of title to the petition schedule property and also with regard to the discrepancy in his father’s name. It is settled law that however weak the case of the respondent may be, the burden lies on the petitioner to prove his prima facie case. When the tenant denies the title of the landlord or asserts title to the property, the burden

⁹ 2012 (2) ALD 104

obviously lies on the landlord to show that he has prima facie title to the property’.

9. In fact, that decision has no application to the facts, for the reason that here the landlord proved his title from the abundant recorded evidence placed before the Court as also discussed supra and also from the registered sale deed presumption of title can be drawn, for the burden shifted on the tenant as also held by the Apex Court in Prem Singh supra. At this stage, the counsel for the tenant-revision petitioners, drawn the attention of the Court that there are some unfiled documents before the trial Court that were inadvertently not exhibited before the trial Court and that could not be even brought to the notice of the lower appellate Court, much less to receive from the tenants as additional evidence and it requires to be considered in revision. For that, the learned counsel placed reliance on Full Bench expression of this Court in **Vinukonda Venkata Ramana v. Mootha Venkateswara Rao and another**¹⁰ referring to Section 22 of the Act, saying additional evidence can be taken by the revisional Court as per the provision. Even from this expression, it may be an enabling provision. However, once this is the factual scenario of the proof, with concurrent findings regarding the proof of title, though the reversal finding of the lower appellate Court is otherwise justified as concluded supra, to concur by sitting in revision for nothing perverse, there is nothing to consider the receiving of any additional evidence at

¹⁰ AIR 2002 AP 52

this stage even from that expression of an enabling provision; leave it of the settled expression of the subsequent Constitutional Bench of the Apex Court in **Hindustan Petroleum Company Limited v. Dilbahar Singh**¹¹, that from the scope of 22 of the Act, the wording is Court may entertain a revision and call for and examine the records relating to ordering or proceeding in question for purpose of satisfying itself as to the legality, regularity or propriety of such order or proceeding. The provisions similar to it particularly under the Tamil Nadu Rent Control Act apart from several enactments of several states and union territories were well considered by the Apex Court Constitution Bench in the above expression and held that the revision Court cannot re-appreciate the facts for the scope of revision is very limited and it is only where anything is pointed out by drawing the attention of the Court of a finding is perverse and illegal and unsustainable, then only to consider the legality or otherwise of such finding only to the limited extent facts can be re-appreciated and not otherwise. Once such is the case, the question of receiving for the first time in revision any additional documents for additional evidence does not arise.

10. Having regard to the above, there are no grounds to consider the urge from the learned counsel for the revision petitioners to permit for adducing any additional evidence.

¹¹ (2014) 9 SCC 78

11. Now coming back to the correctness of the lower appellate Court's reversal finding of the jural relationship of landlord and tenant exists, as referred supra, it is from the factual background and also from the admission of the respondent, particularly of R.C.No.149 of 2008, particularly at para 12 in answering the point No.3 that she admitted in her cross-examination of she along with N. Sunder Raj, the other tenant of R.C.No.148 of 2008, Prem Kumar, Shankar and Sudarshan are residing in the compound as tenants of D.Keshava Rao, the vendor of the eviction petitioners, covered by Ex.P.1 respective sale deeds and that she does not know whether the appellant (the eviction petitioner) respectively requested them to vacate the schedule property. She also stated that at one point of her cross-examination that other persons namely Prem Kumar, Shankar and Sudarshan, whom she referred as co-tenants in her earlier statement, vacated the petition schedule property. Thus, it is also the evidence in the cross-examination admission which is crucial not even explained away by re-examination, cannot be ignored. No doubt, the counsel for the revision petitioners drawn attention of this Court to the said deposition of RW.1 cross-examination in R.C.No.149 of 2008 in question, saying in the typed deposition recorded by the Court the Xerox copy of which filed herein, there is a mistake in putting a full stop and next sentence commenced with we by using 'w' capital, instead of reading as one sentence the typographical mistake cannot be read as if in isolation of the other part as an admission. A perusal of the deposition

is clear that there is a full stop and commencement of the next sentence, even leave it as it is, as concluded supra of ignoring even the said admission, once the factual background show from the denial of title, that title by landlord could be proved and from denial of identity that could be proved also by landlord and from claim of ownership by tenants that was failed to prove including of any other entitlement, the only inference to be drawn is that, but for as tenant he and she could not continue that also supported from another Single Judge expression of the Punjab and Haryana High Court in Civil Revision No.3550 of 2011, dated 26.08.2011 in **Narinder Kumar v. Rajinder Singh**, which reads “it may also be relevant to mention that learned counsel for the petitioner could not dispute the well settled proposition of law to the effect that once the tenant has denied the relationship of landlord and tenant and the respondent has successfully proved that he was landlord of the demised premises, then this would lead to the eviction of the tenant from the demised property, straightway. Thus, there is nothing to interfere with the lower appellate Court’s finding of the denial of title by the finding of existence of the jural relationship of landlord and tenant and denial of the title is not bonafide. Having regard to the above, the tenants are liable for eviction.

12. Accordingly and in the result, the revisions are dismissed. However, time for vacating granted of six months from today, subject to clearing of all arrears of rent, failing which the respondent-landlord can enforce through due process of law to execute to evict. It is made

clear that if at all the revision petitioners want to avail a civil Court remedy of declaration of title, this Tribunal finding culminated in revision in ordering eviction no way take away that right though otherwise operates as resjudicata if any is made clear, by virtue of this order.

Miscellaneous petitions pending, if any, shall stand dismissed.

No order as to costs.

Dr. B. SIVA SANKARA RAO, J

13th December 2017.

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L.R.Copy to be marked – Yes.

