

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.6411 of 2016

ORDER :

This Civil Revision Petition is filed under Section 22 of the AP Buildings (Lease, Rent and Eviction) Control Act, 1960 challenging the order dt.21-10-2016 in R.C.A.No.1 of 2014 of the Rent Control Appellate Authority-cum-Senior Civil Judge, Tadepalligudem confirming the order dt.18-03-2014 in R.C.C.No.4 of 2005 of the Rent Controller-cum-Principal Junior Civil Judge, Tadepalligudem.

2. The petitioner herein is the tenant of the respondent.
3. The respondent filed the R.C.C. for eviction of the petitioner on the ground that he bonafidely requires the R.C.C. schedule residential property and also on the ground that the petitioner had wilfully denied his title. He contended that he was due to retire on 30-01-2009 and he is contemplating to settle in Tadepalligudem where the said property is located by constructing a terraced building after demolishing the existing old tiled house. He also stated that he has no other own residential building at Tadepalligudem and he had asked his brother-in-law by name Gandhi and his co-son-in-law one Paturi Adi Narayana to contact the petitioner and convince him to vacate the property and in spite of the same, the petitioner did not vacate the property. He also contended that the petitioner set up a forged agreement of sale dt.05-06-1995 as if respondent had agreed to

sell the above property to him and got issued a legal notice on 28-04-2005, but he got issued a reply notice on 03-05-2005 demanding a copy of the agreement of sale. He also stated that the petitioner filed O.S.No.105 of 2005 on the basis of the said agreement of sale and thus wilfully denied his title.

4. The petitioner filed a counter admitting the relationship of landlord and tenant between the respondent and himself, but stated that the respondent was an employee in Cooperative Central Bank and had approached the petitioner in June 1995 to sell the R.C. schedule property for discharging sundry debts and for purchasing property in some other village. He stated that the total consideration was Rs.2,80,000/- and a sum of Rs.1,20,000/- was paid as advance. He also claimed to have paid Rs.60,000/- on 30-05-1999 and Rs.80,000/- on 23-06-2002 and endorsements were made on the backside of the sale agreement. He also claimed to have arranged the balance consideration of Rs.20,000/- and contended that the petitioner did not cooperate in the execution of the sale deed and he was forced to file suit O.S.No.105 of 2005 for specific performance of agreement of sale against the respondent. He also raised a plea that the respondent hails from Nallajerla village where he had a house and a site apart from other lands and the respondent had no intention to settle in Tadepalligudem. He also claimed that he was entitled to protection under Section 53-A of the Transfer of Property Act, 1882 till O.S.No.105 of 2005 filed by him is decided. He contended that the

requirement of the respondent is not bonafide and he is not entitled to seek eviction of the petitioner.

5. Before the Rent controller, the respondent examined P.Ws.1 and 2 and marked Exs.A-1 to A-7 while the petitioner examined R.Ws.1 to 3 and Exs.B-1 to B-7. Exs.X-1 to X-3 were also marked.

6. By order dt.18-03-2014, R.C.No.4 of 2005 was allowed by the Rent Controller holding that the relationship of tenant and landlord between the petitioner and the respondent was admitted; that Rent Controller cannot decide the validity of the agreement of sale set up by the petitioner when suit for specific performance of the said agreement was pending; that no evidence is placed to show that the property in Nallajerla belonged to the respondent and that P.W.2 claimed that it belongs to him; that the petitioner admitted that the respondent underwent some operation for his knee and other health problems, that the petitioner was unable to show that the respondent had some other property; even if such property is available, it would not disentitle the respondents to seek eviction from the R.C. schedule property; and petitioner cannot dictate to the respondent where he should live. He held that the petitioner is a retired employee and therefore his requirement for the R.C.C. schedule property is bonafide and the petitioner is therefore liable to be evicted.

7. Challenging the same, the respondent filed R.C.A.No.1 of 2014. The said R.C.A. was dismissed by the appellate Authority on

21-10-2016 by a cryptic order stating that he cannot go into the doctrine of part performance, that O.S.No.105 of 2005 filed by the petitioner was dismissed though an appeal is filed against the same, and therefore the petitioner is not entitled to continue in possession.

8. Aggrieved thereby this Revision Petition is filed.

9. The learned counsel for the petitioner contended that detailed written arguments were filed by the petitioner not only on the part performance plea but also on the plea of bonafide requirement, that the appellate authority ignored all the contentions raised with regard to bonafide requirement by the petitioner in the appeal and the decisions cited on behalf of the petitioner and passed a cryptic order. He also filed an affidavit before this Court of the counsel who appeared for the petitioner before the Appellate Authority to the above effect. He contended that the exercise of appellate jurisdiction by the appellate authority is thus vitiated and the order of the appellate authority is liable to be set aside.

10. The learned counsel for the respondent supported the orders passed by the appellate authority and the Rent Controller.

11. A perusal of the appellate authority's order dt.21-10-2016 in R.C.A.No.1 of 2014 clearly indicates that the appellate authority did not advert to the several contentions raised in the written submissions filed on behalf of the petitioner or to the decisions cited on behalf of the petitioner. The plea of the petitioner with regard to the bonafide

requirement of the respondent has not been adverted to nor the evidence in that regard considered by the appellate authority. An appellate authority is supposed to consider afresh the oral and documentary evidence and the contentions of the parties and record a finding thereon. In this case, this was not done. Therefore, the order of the appellate authority cannot be sustained.

12. Accordingly, the C.R.P. is allowed and the order dt.21-10-2016 in R.C.A.No.1 of 2014 of the Rent Controller Appellate Authority-cum-Senior Civil Judge, Tadepalligudem is set aside; the said appeal is remanded back to the said authority; and the said authority is directed to consider the entire evidence on record as well as the written submissions and decisions submitted by both sides and then decide the R.C.A. afresh within six weeks from the date of receipt of a copy of the order. Till the said appeal is decided by the appellate authority, the petitioner shall not be evicted by the respondent. No costs.

13. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 05-01-2017

Note:-

Issue C.C. tomorrow.

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