

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2964 Of 2011

ORDER:

1 This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 21.04.2011 passed in A.T.A.No.22 of 2008 on the file of the Tenancy Appellate Tribunal (Principal District Judge) West Godavari at Eluru wherein and whereby the order dated 21.07.2008 passed in ATC No.41 of 2004 on the file of the Special Officer (Tenancy)-cum-Principal Junior Civil Judge, Tanuku was set aside.

2 The contention of the learned counsel for the petitioner is that the appellate Court passed a slipshod order without taking into consideration the controversy involved in the matter. She further submitted that the appellate Tribunal, having come to know about the passing of decree in O.S.Nos.701 of 2004 and 615 of 2008, ought not to have reversed the order of the Special Officer (Tenancy).

3 *Per contra*, the learned counsel for the respondent submitted that the Point Nos.1 and 2 framed by the Special Officer fall outside the jurisdiction of the Tenancy Tribunal. He further submitted that the appellate Tribunal has assigned cogent and valid reasons to its findings, therefore, it is a fit case to dismiss this Civil Revision Petition.

4 For the sake of convenience, parties to this Revision Petition will hereinafter be referred to as they are arrayed before the trial Court.

5 The brief facts that lead to the filing of the present Civil Revision Petition are as follows:

6 The petitioner filed ATC No.41 of 2004 on the file of the Special Officer (Tenancy)-cum-Principal Junior Civil Judge, Tanuku against the respondent for eviction from the petition schedule property on the ground of wilful default in payment of maktha. The respondent filed counter denying the jural relationship of landlord and tenant the petitioner and him.

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Ex.A.1 to A.6 were marked. On behalf of the respondent R.Ws.1 to 5 were examined but no document was marked.

8 After having a thoughtful consideration to the oral, documentary evidence and other material available on record, the Tenancy Court arrived at a conclusion that the respondent is tenant of the petitioner and that he committed default in payment of maktha to the petitioner and accordingly allowed the ATC by order dated 21.07.2008. Feeling aggrieved by the order passed in ATC No.41 of 2004, the respondent filed A.T.A.No.22 of 2008 on the file of the Court of the Tenancy Appellate Tribunal (Principal District Judge) West Godavari at Eluru. The appellate Tribunal after affording reasonable opportunity to both parties, set aside the order passed by the Special officer (Tenancy) in ATC No.41 of 2004. Hence the present Civil Revision Petition by the petitioner.

9 A perusal of the record reveals that the Special Officer (Tenancy) framed the following points for consideration.

- a) Whether the petition schedule property is the ancestral property or self acquired property of petitioner's father?
- b) Whether the petitioner's father was competent to execute a Will?

- c) Whether there is relationship of landlord and tenant between the petitioner and the respondent?
- d) Whether the respondent has committed default in payment of rent? and
- e) Whether the respondent is liable to be evicted from the petition schedule property?

10 The Tribunal has given finding on all the points in favour of the petitioner and against the respondent. The appellate Tribunal framed the following points for determination:

1. Whether there is such a relationship of landlord and tenant between petitioner and respondent with respect to the schedule property?
2. Whether the respondent committed default in payment of rents to respondent?
3. Whether the petitioner is entitled to have possession of the schedule property after ejecting the respondent from it? And
4. Whether the order and the decrtal order dated 21.07.2008 passed by the learned Special Officer (Tenancy)-cum-Principal Junior Civil Judge, Tanuku in A.T.C.No.41 of 2004 is liable to be set aside?

11 It is needless to say that appeal is continuation of original proceedings. A duty is cast on the appellate Tribunal to give a specific finding on each and every point framed by the Special Officer. In the instant case the appellate Tribunal has not given specific finding on each and every point framed by it. It is not in dispute that the petitioner filed O.S.Nos.701 of 2004 and 615 of 2008 against the respondent for recovery of arrears of maktha and both suits were allowed. It is also not in dispute that the petitioner filed E.P.No.37 of 2008 in O.S.No.701 of 2004 and recovered Rs.9,382/- from the respondent towards maktha. Nothing is placed on record either before the appellate Tribunal or before this Court to establish that the respondent has filed appeals challenging the judgment and decree passed in O.S.Nos.701 of 2004 and 615 of 2008. The appellate Tribunal made an observation in para No.15 of the judgment about

the granting of decree in favour of the petitioner and against the respondent in O.S.Nos.701 of 2004 and 615 of 2008. Interestingly the appellate Tribunal has not given any specific finding on the binding nature or legality of the judgments in those two suits while deciding the appeal. On the other hand the appellate Tribunal simply allowed the appeal on the sole ground that the point Nos.1 and 2 framed by the Special Officer (Tenancy) fall outside the jurisdiction of the Tenancy Tribunal. The entire controversy revolves around the following two points: **1)** Whether there is any jural relationship of landlord and tenant between the petitioner and the respondent, if that is so, **2)** Whether the respondent has committed default in payment of maktha. These are the two points to be answered by the appellate tribunal separately. For one reason or the other, as observed earlier, the appellate Tribunal has not considered these two vital aspects separately. If the order of the appellate Tribunal is allowed to stand, it would, certainly, amount to miscarriage of justice. However, if this Court gives a finding on these two aspects, the same may cause serious prejudice to one of the parties to the proceedings.

12 Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to remit the matter to the appellate Tribunal so as to enable it to give a specific finding on the two points referred above.

13 The learned counsel for the petitioner submitted that on 15.09.2011 this Court directed the parties to maintain *status quo*.

14 In the result, the Civil Revision Petition is allowed, setting aside the order dated 21.04.2011 passed in A.T.A.No.22 of 2008 on the file

of the Tenancy Appellate Tribunal (Principal District Judge) West Godavari at Eluru and the matter is remitted to the appellate Tribunal for fresh disposal on the following two points viz., **1)** Whether there is any jural relationship of landlord and tenant between the petitioner and the respondent, if that is so, **2)** Whether the respondent has committed default in payment of maktha, after affording a reasonable opportunity to both parties and without being influenced by any of the observations made by this Court herein. Both parties are directed to maintain *status quo* till disposal of the appeal as directed by this Court on 15.09.2011. No order as to costs. As a sequel, miscellaneous petitions, if any connected to this Civil Revision Petition, shall stand closed.



T. SUNIL CHOWDARY, J.

Date: 8th March, 2017.
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