

THE HON'BLE SRI JUSTICE M.GANGA RAO

CIVIL REVISION PETITION No.333 OF 2013

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed against the order dated 09.11.2012 passed in I.A.No.2108 of 2011 in R.C.C.No.16 of 2010 by the Principal Junior Civil Judge, Kakinada, (for short 'Rent Controller').

2) The facts leading to filing of the present revision are as follows:

The respondent herein filed R.C.C.No.16 of 2010 before the Rent Controller under Section 10 (2) (I and IV) of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act (for short 'the Act'), seeking eviction of the petitioner from the schedule premises. In said case, petitioner herein filed I.A.No.2108 of 2011 under Section 10 (1) of the Code of Civil Procedure (for short 'CPC') seeking stay of further proceedings in R.C.C.No.16 of 2010 till disposal of O.S.No.128 of 2010 pending on the file of the III Additional District Judge's Court, Kakinada, stating that the respondent is not the owner of the property; petitioner and her brother filed O.S.No.128 of 2010 for partition; there is a dispute regarding the title over the property; unless the title is decided, the Rent Controller cannot decide the question of title and cannot proceed with the Rent Control Case.

3) A counter affidavit came to be filed in the said I.A. stating that the petition is not maintainable under law; the respondent and her brother filed O.S.No.128/2010 for partition; the Rent Control Case is filed basing on the gift deed dated 06.08.2008

executed by the mother of the respondent; the question of title dispute relating to the petition schedule property as averred by the petitioner is not true and correct; the petition is filed only to drag on the matter and to avoid payment of rent to the respondent.

4) The Rent Controller, after considering the rival contentions, dismissed the petition holding that the impugned application is not maintainable; the question of title will be considered only to the limited extent to ascertain whether there exist a landlord and tenant relationship between the respondent and the petitioner; if any finding is given in R.C.C. with regard to title, the same is not conclusive in nature; and only for the reason that O.S.No.128 of 2010 is pending, there is no necessity to stall the proceedings in R.C.C. till disposal of O.S.No.128 of 2010. Aggrieved by the same, present revision is filed.

5) Heard both sides and perused the material on record.

6) The contention of the learned counsel for the petitioner is that the trial Court erred in dismissing the I.A. without considering the fact that gift deed dated 06.08.2008 is under challenge in the partition suit. For adjudicating landlord and tenant relationship by the Rent Controller, title over the schedule premises is very much essential, which can be decided only in O.S.No.128 of 2010.

7) Per contra, learned counsel for the respondent would submit that I.A.No.2108 of 2011, which is filed under Section 10 CPC seeking to stay the proceedings in R.C.C., is not maintainable on the ground that the petition is filed after P.W-1's evidence and when the RCC was coming up for cross-examination. The issues

for adjudication in R.C.C are not directly and substantially in issue in the suit filed by the respondent. The provision under Section 10 CPC has no application to the rent control proceedings since the Rent Control Court and Civil Court are not Courts of concurrent jurisdiction and the Civil Court has no jurisdiction to grant the relief claimed in the Rent Control Court. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in ***Manta Subbaramayya and others v. Batchu Narasimha Swamy and another***¹.

8) The Rent Control Act is a special enactment, which regulates disputes of tenancy and *inter se* rights and obligations of landlord and tenant. The District Munsiff will be appointed as a Rent Controller under the Act and conducts to perform the functions of a Rent Controller under the Act. The Act is intended for speedy trial and disposal of the cases relating to tenant and landlord. The Rent Controller cannot grant the relief of declaration of occupancy rights. The object underlying Section 10 CPC is to avoid recording of conflicting findings of issue which are directly and substantially in issue in previously instituted suits. In all, Section 10 CPC suggests that it is referable to a suit instituted in the Civil Court and it cannot be applied to the proceedings in other cases instituted under any other Statutes. Thus, it is crystal clear that Section 10 CPC is referable to a suit instituted in a Civil Court only. The proceedings before the Rent Controller cannot be equated with the proceedings before the Civil Court. It is not the Court of concurrent jurisdiction. Hence, the provision of Section 10 CPC has no application to the facts of the present case.

¹ AIR 1972 Andhra Pradesh 186 (V.59 C 42)

9) Coming to the decision relied upon by the learned counsel for the respondent in ***Manta Subbaramayya (1 supra)***, paras 10, 12, 14 and 15 are relevant for adjudication of the present revision, which read as under:

10. On a plain reading of the section, it is manifest that Section 10 is attracted only when the previously instituted proceedings and the subsequently instituted proceedings are suits. If one is suit and the other not Section 10 Civil P.C. is not attracted.

12. Moreover for the application of Section 10 Civil P.C. both the courts in which the suits are pending, must be of concurrent jurisdiction. That is to say, the court in which the previously instituted suit is pending must have jurisdiction to grant the relief claimed in the subsequent suit. The Rent Controller in this case does not possess the jurisdiction to pass a partition decree or to order separate possession in the original suit. Unless the suits are pending in courts of concurrent jurisdiction Section 10 Civil P.C. is not attracted.

14. No doubt, apart from Sec.10 stay of suit can be granted under inherent powers exercisable by a court under Section 151 Civil P.C. As already stated above, the Rent Controller is not a Court. He can exercise inherent powers only, which are necessary for ordering eviction of the tenants, or for determination of those issues, which are necessary for ordering eviction of tenants.

15. Inherent powers cannot be invoked in a case where a particular procedure has been laid down to meet a particular contingency. Under S.10 (6) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, if the tenants deny the title of the landlord or claim permanent tenancy, then the Rent Controller has to determine the bona fides of that plea raised by the tenants. If he is of the opinion that the denial of landlord's title by the tenants is bona fide, then he shall dismiss the eviction petition filed by the landlord. If on the other hand he is not satisfied about the bona fides of the denial of title raised by the tenants, then he shall order the tenants to put the landlord in possession of the building. When a particular procedure is laid down in the Rent Control Act itself in case of denial of title provisions of Civil P.C. i.e., Section 10 or 151, Civil P.C. are not applicable. The provisions of Section 10 (6) of the Rent Control Act are also mandatory. The Rent Controller has no option to proceed in any other manner except in the manner stated in Section 10 (6) in case of denial of landlord's title by the tenants."

10) In the said case, the petitioner sought eviction of tenant under the provisions of the Act and a petition under Section 10 r/w. Section 151 CPC was filed to stay the proceedings on the ground that partition suit is pending against the landlord and thereby the tenant denied the title of the landlord. In such a situation, it was held that the rent control proceedings are summary proceedings, which are intended to be disposed of expeditiously. The proceedings in the suit may take long time for disposal and it would be unjust to stay the rent control proceedings till disposal of the partition suit. The ratio referred to above is directly applicable to the facts of the present case.

11) For the reasons mentioned in the foregoing paragraphs and in view of the ratio laid down by the Hon'ble Supreme Court in ***Manta Subbaramayya (1 supra)***, I find no illegality or irregularity in Rent Controller dismissing the I.A. filed by the petitioner under Section 10 CPC seeking stay of the proceedings. Hence, the Civil Revision Petition is dismissed.

12) Miscellaneous petitions pending in this revision, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

3rd November, 2017

Note : L.R. Copy to be marked.

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