

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.6321 of 2016

ORDER:

The revision petitioners/tenants filed this revision under Section 22 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960, (Act XV of 1960) assailing the order and decretal order, dated 03.11.2016, of the learned Senior Civil Judge-cum-appellate authority passed in R.C.A.No.1 of 2015, whereby the learned appellate authority while dismissing the said appeal of the tenants confirmed the order and decretal order, dated 30.7.2015, of the learned Rent Controller-cum-Principal Junior Civil Judge, Proddatur, passed in R.C.C.No.1 of 2012.

2. I have heard the submissions of *Sri D.Krishnan Murthy*, learned counsel appearing for the revision petitioners/tenants, and of *Sri V.R.Reddy Kovvuri*, learned counsel for the respondent/landlord. I have perused the material record.

3. In this revision petition, the parties shall hereinafter be referred to as the petitioner/landlord and the respondents/tenants as arrayed in the original rent control case, for convenience and clarity.

4. Before proceeding further, it is necessary to refer to the pleadings of the parties.

4.1 The case of the landlord, in brief, is this:

The petitioner/landlord is the absolute owner of the residential house bearing Door No.18/ 349 (old) and present Dr.No.18/ 435 situated in Pangaiahgari Street, Proaddatur Town and Mandal, more fully described in the schedule annexed to the petition. The said property was purchased by the petitioner from Vempalle Chandra Sekhar Reddy, i.e.,

the 2nd respondent, under a registered sale deed, dated 25.02.2009, executed by the 2nd respondent in favour of the petitioner. The petitioner has been in peaceful possession and enjoyment of the petition schedule house to the knowledge of every person in the vicinity including the respondents. The original registered sale deed is filed into Court. The petitioner is also paying property taxes. The property tax receipts are filed into Court. The petitioner is the landlord and the respondents 1 and 2, who are mother and son, are the tenants in the property. They approached the petitioner, on 25.02.2009, and requested the petitioner to lease out the petition schedule property to them on a monthly rent of Rs.700/- and entered into an agreement with the petitioner having executed a lease agreement, dated 25.02.2009, on a stamp paper of the value of Rs.20/- . The respondents further agreed to pay electricity consumption charges. Initially the respondents regularly paid a monthly rent @ Rs.700/- to the petitioner. Since five months prior to the filing of the eviction case, the respondents wilfully committed defaults in payments of rents and neglected & refused to pay the rents to the petitioner. As the respondents committed wilful defaults in payment of rents, the petitioner demanded them to pay arrears of rents and vacate the petition schedule house property and deliver vacant possession of the same. The respondents avoided to pay the arrears of rents. The petitioner is not having any other house except the petition schedule house in Proddatur Town. He is now residing in a rented house in Sastri Nagar. He needs the petition schedule house for his personal occupation. His landlord is requesting the petitioner to vacate the tenanted property as he has come to know that the petitioner leased out his own house to the respondents herein. Hence, the petition is filed for eviction.

4.2 The case of the respondents, in brief, is as follows:

The material allegations in the petition are all absolutely false. There is no landlord and tenant relationship between the petitioner and the respondents. The unregistered lease agreement, dated 25.02.2009, is inadmissible in evidence. The allegations in the petition are blatant falsehood and distorted lies. The petitioner is the owner of three storied residential building bearing Door no.2/ 531 situated in Sastry Nagar, Proaddatur. He is residing in the second floor of the said building. He leased out the ground floor on a monthly rent of Rs.10,000/- and also two portions in the first floor to third parties on monthly rent of Rs.5,000/- each. The Municipal and electricity authorities of Proaddatur, if summoned, will produce necessary records to show that the petitioner is the owner of the said three storied building. The petitioner is having 40 houses in Proddatur, Kadapa and other places. The 2nd respondent worked as a Clerk in the shop of the petitioner. For the family necessities, he borrowed Rs.54,000/-, Rs.90,000/-, Rs.50,000/-, Rs.80,000/- Rs.60,000/- Rs.1,00,000/- from Yenugu Subba Reddy S/o Veera Reddy, Amrutha Nagar, Proddatur Town; Bindula Chenna Reddy S/o Obula Reddy, R/o Dharmapuri village, Vazrakarur Mandal, Anantapur District; Narala Guru Bhaskar Reddy S/o Gurivi Reddy, Vasanthapeta, Proddatur Town, Kamatam Bala Venkata Reddy S/o Venkata Reddy, resident of Lingapuram village; Chevitipalle Audinarayana Reddy S/o Nagi Reddy, resident of Srinivasa Nagar, Proddatur Town; and, Vennapusa Chandra Sekhar Reddy S/o Ramakrishna Reddy, resident of Mittamda Street, Proaddatur Town, respectively and executed promissory notes in their favour for the said sums. On account of his financial problems, the 2nd respondent was unable to repay the said debts to his said creditors. So, his creditors exerted pressure on him to repay the said debts due to

them. Then, the 2nd respondent approached the petitioner and explained his problems and surrendered before him for advice and help as there was no other way to escape from his problems. Then, the petitioner advised the 2nd respondent and stated that he would settle the problem; and, he asked the 2nd respondent to execute a registered sale deed in respect of the petition schedule property in his name and stated that he being an elderly man would discharge all the debts of the 2nd respondent within ten days in a ratio method. The 2nd respondent believed the words of the petitioner and reposed confidence upon him and trusted him. The 2nd respondent executed a nominal registered sale deed in the name of the petitioner without taking the alleged consideration amount of Rs.2,34,000/- and without delivery of possession of the property. After fifteen days, the 2nd respondent asked the petitioner about payment of amount to his creditors. The petitioner stated that within few days he will pay the debts. After few days, the 2nd respondent asked the petitioner about the repayment of debts. Then, the petitioner stated that at present he has no sufficient amount to pay the debts and asked the 2nd respondent to escape from the Town for a period of one month by stating that he would solve the entire issue. Accordingly, the 2nd respondent left for his relative's house and came back to the town after one month. There is no change in the circumstances even by the date of his return to the Town. The petitioner did not pay single paisa to the creditors of the 2nd respondent. The 2nd respondent went to the shop of the petitioner and questioned him about the payment of debts. The petitioner then stated that he is the owner of the house and that he will not make any payment to the creditors of the 2nd respondent and that he has no need to discharge the debts of the 2nd respondent. The 2nd respondent went to the police

station and lodged a complaint against the petitioner. The police did not take any action. The petitioner is a powerful person and is having political influence. The petitioner did not pay any consideration to the 2nd respondent under registered sale deed, dated 25.02.2009. The said sale deed is a nominal sale deed. Under the said sale deed, the 2nd respondent did not handover possession of the petition schedule house property to the petitioner. The sale deed not supported by consideration is null and void. The petitioner never leased out the petition schedule property to the respondents on any date, much less, on 25.02.2009, and the respondents have not executed the alleged lease deed. The alleged lease deed is fabricated by forging the signatures in connivance with the alleged attestors and the scribe. There is no relationship of landlord and tenant between the petitioner and the respondents. Hence, the petition is liable to be dismissed.

5. At the time of enquiry before the learned Rent Controller, the petitioner and his supporting witness were examined as PWs 1 and 2 and exhibits A1 to A5 were marked on his side. The 2nd respondent was examined as RW1 and exhibits B1 to B3 were marked on their side.

6. On merits, the learned Rent Controller allowed the petition of the petitioner and ordered eviction of the respondents from the petition schedule property and granted two months time to them to vacate and hand over vacant possession of the petition schedule property to the petitioner. The appeal preferred by the respondents was dismissed by the learned appellate authority confirming the order of the learned Rent Controller. Therefore, the respondents/ tenants are before this Court.

7. Learned counsel for the respondents/tenants, while reiterating their pleaded case, contended as follows: "The alleged registered sale

deed executed by the 2nd respondent in favour of the petitioner is not supported by consideration. It is a nominal document. It is null and void as it was executed in the circumstances stated by the 2nd respondent in his counter. Possession of the schedule property was never delivered, much less under the sale deed, to the petitioner. The lease deed relied upon by the petitioner is forged and fabricated. In any view of the matter it is inadmissible in evidence, as it is unregistered. There is no jural relationship between the petitioner and the respondents. Therefore, the orders of the Courts below, which are passed without properly appreciating the facts and the legal position, are unsustainable under facts and in law and are liable to be set aside.”

8. Per contra, the learned counsel for the petitioner/landlord while supporting the concurrent findings of the Courts below would submit as follows: “The jurisdiction of this Court under Section 115 of the Code is very narrow and limited. This Court while exercising the jurisdiction under Section 22 of the Act need not examine the correctness of the concurrent factual findings as the findings are well reasoned and sustainable under facts and in law. There is no illegality or irregularity or perversity warranting interference. Hence, the revision petition of the respondents/tenants is liable for dismissal.”

9. Now that the pleadings and contentions of both the parties are already stated supra, in detail, there is no need to dilate the same. It is necessary to note that admittedly, there is a registered sale deed in favour of the petitioner in respect of the petition schedule property and the same was executed by the 2nd respondent in favour of the petitioner. The said registered sale deed, dated 25.02.2009, is marked as exhibit A1. According to the petitioner, after such purchase he became the

absolute owner and possessor of the schedule property and that he leased out the property at the request of the respondents and that they had executed an unregistered lease agreement, dated 26.02.2009 and that they initially paid rents for some months and that they committed wilful defaults in payments of rents from five months prior to the institution of the eviction case. The said lease agreement was marked as exhibit A4 for collateral purpose. The petitioner contends that since the said lease deed was marked for collateral purpose it can be relied upon to prove the nature of possession of the respondents/tenants. Per contra, the respondents contend that the sale deed is not supported by consideration and that when the 2nd respondent was unable to discharge the debts payable to his creditors, he approached the petitioner for help and advice and that the petitioner having undertaken to discharge the debts of the 2nd respondent had obtained the sale deed in his favour in respect of the petition schedule house from the 2nd respondent with an understanding that he will discharge the debts and that no consideration was received by the 2nd respondent and that, therefore, the sale deed is null and void and that the 2nd respondent never handed over possession of the property to the petitioner under the sale deed and that there is no jural relationship and that the petitioner failed to discharge the debts of the 2nd respondent as undertaken. Be that as it may. In the evidence, PW1 asserted his case and also examined the attesor of the unregistered lease deed as PW2. The 2nd respondent admits the execution of the registered sale deed. His only contention is that no consideration passed under the sale deed and that it was executed in the above stated circumstances on the advice of the petitioner and on an understanding that the petitioner would discharge the debts of the 2nd respondent and that the sale deed is a nominal document and that

for non-payment of consideration, the sale deed is null and void. However, the 2nd respondent failed to prove the said contentions by adducing any cogent evidence or evidence of the required standard. He did not file a civil suit for cancellation of the said sale deed. Though the sale deed is of the year 2009, no civil proceedings are initiated till date for setting aside/ cancellation of the said sale deed in respect of the petition schedule property executed in favour of the petitioner. In fact, the creditors of the 2nd respondent filed IP 11 of 2009 on the file of Senior Civil Court, Proddatur, to declare the 2nd respondent as an insolvent and to set aside the sale deed, dated 25.02.2009. The said IP was dismissed, on merits. The certified copies of the order and decretal order in IP no.11 of 2009 on the file of the Senior Civil Court, Proddatur, together were marked as exhibit A5. The 2nd respondent pleaded ignorance of the result of the IP in his cross-examination. The 2nd respondent has taken similar defence in the counter filed by him in the insolvency proceedings filed by his creditors. The sale deed of the petitioner herein was marked as exhibit B14 in the said IP. In the said Insolvency proceedings, the learned Senior Civil Judge categorically held that the 2nd respondent herein in collusion with the petitioners in the said creditors IP developed litigation to have the sale deed of the petitioner herein, annulled. In view of the fact that the said sale deed-exhibit A1 was not got cancelled by filing a regular civil proceeding for setting aside the sale deed and the further fact that the learned Senior Civil Judge upheld the validity of the said sale deed, in the insolvency proceedings, the Courts below have concurrently held that exhibit A1, sale deed, is true, valid and binding on the 2nd respondent. Exhibit A1 contains a clear recital that possession of the schedule property was delivered to the petitioner by the 2nd respondent. The property is also

mutated in the name of the petitioner in the municipal records. In view of the very same defence taken, which is not believed by the senior civil Court in the insolvency proceedings, and the admitted non-payment of rents, the Courts below concurrently held that there is jural relationship of landlord and tenants between the petitioner and the respondents and that the respondents are wilful defaulters in payments of rents as contended by the petitioner.

10. Before proceeding further, it is to be noted that the Courts below also considered the unregistered lease deed, exhibit A4, for arriving at a finding that there is jural relationship of landlord and tenants between the parties. However, the case of the respondents is that the lease deed, which is insufficiently stamped and unregistered is inadmissible in evidence. In support of the said contention that unregistered lease deed is inadmissible in evidence, in view of the provisions of the Indian Stamp Act and Indian Registration Act as applicable to such instruments in the State of AP, the respondents relied upon the decisions in K.B. Saha and Sons Private Limited v. Development Consultant Limited¹ and Hussain Begum v. Madu Ranga Rao and others.² The respondents submit that the petitioner is relying upon the unregistered lease not for any collateral purpose; but, for proving the jural relationship or nature of alleged possession of the respondents and that the said purpose is the main purpose and is not a collateral purpose and, therefore, the unregistered lease deed cannot be looked into. Their further contention is that if this unregistered lease deed is to be excluded from consideration, there is no evidence much less reliable evidence of the required standard to prove the jural relationship of landlord and tenants between the parties. Both the Courts below no doubt placed reliance

¹ (2008) 8 Supreme Court Cases 564

² 2000 (1) ALT 568

on the said lease deed also to arrive at a conclusion that there is jural relationship. Even if this Court exclude from consideration the said lease agreement, by duly accepting, the contention of the respondents/tenants that the insufficiently stamped and unregistered lease deed/ agreement cannot be looked into for the reasons that it is not sufficiently stamped & unregistered and that the purpose for which it is being relied upon is not collateral purpose but the main purpose, still there is oral evidence on record. This Court upheld the contention of the petitioner that he purchased the property from the 2nd respondent under exhibit A1, registered sale deed, and that the sale deed is valid for various reasons including the reason that its validity is upheld in the insolvency proceedings filed by the creditors against the 2nd respondent. In the sale deed, there is a clear recital that the possession of the property was delivered under the sale deed by the 2nd respondent to the petitioner. Therefore, the contention that the property was not delivered under the sale deed is **not** countenanced by the Courts below. The Courts below also considered the oral evidence, before holding that there is jural relationship between the parties. In view of the fact that the defence taken by the respondents/ tenants is found to be false and as their identical contentions, which were raised in the insolvency proceedings, were negated by a competent Court in the insolvency proceedings is evident from exhibit A5, this Court, on an application of test of preponderance of probabilities, is inclined to accept the concurrent findings of the Courts below on this aspect of jural relationship as the said view is more probable in the facts and circumstances of the case.

11. The Constitution Bench of the Supreme Court settled the law relating to exercise of jurisdiction of the High Court while deciding

revision in rent matters under the Rent Control Act in the case of Hindustan Petroleum Corporation Limited v. Dilbahar Singh: (2014) 9 SCC 78. The said legal position is as follows:

“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/ first appellate authority because on reappraisal of the evidence, its view is different from the court/ authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/ authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/ authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappraise or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

This Court while exercising revisional powers/jurisdiction under the rent control law shall confine itself to the aspects of legality, regularity and propriety of the order impugned before it. This Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. On careful examination of the pleadings and the evidence, this Court does not find any illegality or irregularity or impropriety either in appreciation of the facts or the evidence by the Courts below. On the above analysis, this Court finds that the Courts below are justified in ordering eviction of the tenants/revision petitioners and that there is no merit in the revision and that the revision petition is liable to be dismissed.

12. In the result, the Civil Revision Petition is dismissed. The tenants are granted a time of (3) three months from the date of receipt of a copy of this order to vacate and handover vacant peaceful possession of the petition schedule property to the landlord. Failing which the landlord shall be at liberty to obtain delivery of possession of the petition schedule property by following the due procedure established by law.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

03.10. 2017
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