

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No.6124 of 2017

ORDER :

This Civil Revision Petition, under Article 227 of the Constitution of India, is preferred by the petitioner against the order dated 01.09.2017 in I.A.No.72 of 2017 in O.S.No.38 of 2016 passed by the Senior Civil Judge, Adilabad, dismissing the application filed by him seeking to direct the respondent to deposit the arrears of rent of Rs.3,30,000/- with interest @ 18% per annum and also to deposit the arrears of rent amount mentioned in the plaint.

2. The petitioner-plaintiff filed the suit in O.S.No.38 of 2016 against the respondent-defendant for eviction and also for arrears of rent of Rs.3,30,000/- for the suit mulgi. Along with the suit, the petitioner also filed I.A.No.72 of 2017 seeking to direct the respondent to deposit the arrears of rent of Rs.3,30,000/- with interest @ 18% per annum and also to deposit the arrears of rent amount mentioned in the plaint. The respondent filed counter contending that he is not the tenant of the petitioner and he is the tenant of one Mr. Abhay Kumar Kommawar, as he entered into a lease agreement with Mr. Abhay Kumar Kommawar on 14.02.2014 and running his business in the suit schedule premises. It is also contended that the petitioner is a stranger to him and he is not entitled

to claim any relief. After considering the rival submissions, the Court below dismissed the said application by impugned order dated 01.09.2017. Aggrieved by the same, the petitioner has filed the present Civil Revision Petition.

3. Heard Sri T. Sujan Kumar, learned counsel for the petitioner, as well as Sri V. Ravi Kiran Rao, learned counsel for the respondent and perused the material on record.

4. Learned counsel for the petitioner submits that the petitioner has purchased the demised premises from Mr. Abhay Kumar Kommawar under a registered Sale Deed dated 17.10.2013 and by virtue of the said sale deed, all the rights in the said property have been transferred to the petitioner and he became the owner of the said premises. Learned counsel for the petitioner would further submit that as per Section 109 of the Transfer of Property Act, 1882 (for brevity "the Act"), the petitioner has got absolute rights over the suit schedule property and the so-called tenancy of the respondent with Mr. Abhay Kumar Kommawar has also been transferred to him and hence the jural relationship shall continue with the existing landlord.

5. In support of his contention, learned counsel for the petitioner placed reliance on the decisions of this Court in R. AJAY KUMAR v. CHEELA NARAYANA RAO AND

ANOTHER¹ and M. SURYANARAYANARAJU v. K. APPARAO² and also a decision of Patna High Court in SMT. KALAWATI TRIPATHI AND OTHERS v. SMT. DAMAYANTI DEVI AND ANOTHER³.

6. Placing reliance on the aforesaid decisions, learned counsel for the petitioner submits that since the Court below has not considered the aspect of continuance of jural relationship between the petitioner and the respondent as landlord and tenant, in the light of the provision of Section 109 of the Act, the impugned order passed by the Court below is not in accordance with law and it is liable to be set aside.

7. *Per contra*, learned counsel for the respondent submits that the petitioner is a third party as the respondent was the tenant of Mr. Abhay Kumar Kommawar and he does not know about the sale transaction between the petitioner and the said Abhay Kumar Kommawar. Learned counsel for the respondent further submits that the petitioner has not mentioned any particulars with regard to the lease agreement and calculation of arrears of rent. He did not even mention the date of purchase of the property in the suit and in the absence of all these particulars, the petitioner cannot maintain the suit. It is further submitted that the respondent entered into a lease agreement with Mr. Abhay Kumar

¹ 2016 (6) ALD 150

² 1997 (3) ALD 378

³ AIR 1993 PATNA 1

Kommawar on 14.02.2014 for a period of five years and as per the said lease agreement, the respondent has deposited an amount of Rs.6,00,000/- towards security deposit with the landlord and the arrears of rent, if any, can be deducted from the said security deposit amount in the event of proof of jural relationship between the petitioner and the respondent. Learned counsel for the respondent further submits that as per Section 15-A of C.P.C., a detailed enquiry has to be conducted in the matter and without conducting such enquiry, the petitioner is not entitled for the relief sought in the petition.

8. On consideration of the rival submissions of the learned counsel for the respective parties, it is obvious that the impugned order passed by the Court below coming to the conclusion that the petitioner is a stranger to the respondent and, therefore, he is not entitled for the relief, cannot be accepted. As rightly contended by the learned counsel for the respondent, the Court below ought to have conducted an enquiry as contemplated under Section 15-A of C.P.C., before passing the impugned order. *Prima-facie*, the contention raised by the petitioner is that he is the purchaser of the suit schedule property from Mr. Abhay Kumar Kommawar, who is the previous landlord of the respondent. Admittedly, there was a lease agreement entered into between the said Abhay Kumar Kommawar and the respondent on 14.02.2014.

Therefore, it can safely be concluded that the impugned order passed by the Court below is not in accordance with law, as it has not considered the provisions of Section 109 of the Act before passing the impugned order.

9. Therefore, keeping in view the facts and circumstances of the case and also the ratio laid down in the aforesaid decisions relied on by the learned counsel for petitioner and since the learned counsel for respondent has not opposed for the said proposition of law, the impugned order dated 01.09.2017 passed by the Court below is liable to be set aside and it is accordingly set aside. The Court below is directed to conduct an enquiry under Section 15-A of C.P.C., by giving an opportunity to both the parties to put-forth their case and pass appropriate orders in accordance with law. The Court below is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order.

10. With the above directions, the Civil Revision Petition is disposed of. No order as to costs.

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

11.12.2017.
Msr

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