

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.5478 OF 2011

ORDER:

This revision petition is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Rent Control Act') questioning the judgment and decree dated 14.10.2011 passed by the Principal Senior Civil Judge, Guntur in R.C.A.No.30 of 2004 reversing the findings recorded by the Principal Junior Civil Judge-cum-Rent Controller, Guntur in R.C.C.No.22 of 2001 vide order dated 13.09.2004.

2. The petitioner herein is the tenant and the respondent is the landlord. The parties hereinafter referred to as tenant and landlord.

3. The landlord filed eviction petition under Section 10(2)(i) of the Rent Control Act for eviction of the tenant from the schedule premises on the ground of willful default alleging that the he is the owner of the schedule premises and the tenant obtained the premises on lease on a monthly rent of Rs.1,000/- for the purpose of running medical shop under the name and style of Sri Sai Ram Medical Stores. As per the terms of oral lease, the rent shall be paid on or before 10th of every succeeding month and that the tenant himself has to bear the electricity consumption charges as per the reading recorded in the sub-meter. The tenant committed default in payment of rent from December, 1995 till the end of March, 2001 amounting to Rs.64,000/-. The default committed by the tenant is willful as the tenant failed to pay rent despite legal notice dated 19.02.2001. The tenant issued contentious reply notice on

26.02.2001 with false allegations. Therefore, the landlord prayed for eviction of the tenant.

4. The tenant filed counter denying material allegations while admitting obtaining the premises initially on monthly rent of Rs.300/- per month with a condition to enhance rent 10% for every two years and that denied the rent payable for the premises is Rs.1,000/- per month while contending that the wife of the tenant purchased the property under the agreement of sale for Rs.1,95,000/- and she paid advance of Rs.1,80,000/- and the balance of sale consideration i.e. Rs.15,000/- is agreed to be paid at the time of execution of registered sale deed, thereby, the wife of the tenant became the owner of the property and that the tenant need not pay rent for the premises. As such the default, if any, committed is not willful and prayed to dismiss the petition.

5. During enquiry before the Court below, on behalf of the landlord, she herself examined as PW.1 and marked Exs.A.1 and A.2 and on behalf of the tenant, RWs.1 to 5 were examined and marked Exs.B.1 to B.9.

6. Upon hearing argument of both counsel, the Rent Controller dismissed the petition holding that the default committed by the tenant is not willful. Aggrieved by the impugned order, landlord preferred RCA before the appellate authority, upon hearing both the counsel the appellate authority held that the default committed by the tenant is willful and that the alleged purchase of the property under agreement of sale by the wife of the tenant would not exonerate the tenant from payment of rent in view of the recitals of

the agreement and it would not confer title to immoveable property and ordered eviction holding that the default committed by the tenant is willful.

7. Aggrieved by the eviction order passed by the appellate authority, the present revision petition is filed on the ground that the rent payable for the premises was not Rs.1,000/-, it was only Rs.300/- per month and that the default allegedly pleaded in the eviction petition is not willful, but the appellate authority on erroneous appreciation of facts and law committed an error in ordering eviction and prayed to set aside the same.

8. During hearing learned counsel for the tenant reiterated the contentions urged in the petition and whereas counsel for the landlord supported the order under challenge, in all respects.

9. Considering rival contentions and perusing the material available on record, the points that arise for consideration is:

Whether non payment of rent in view of the alleged agreement of sale entered into by the wife of the tenant constitute willful default, if so, the eviction order passed by the appellate authority in RCA be sustained?

10. Initially the monthly rent was Rs.300/- with a condition to enhance rent at 10% for every two years is not in dispute. Failure to pay rent for the months of December, 1995 to March, 2001 is also not in dispute. The only defence set up by the tenant is that his wife purchased the property under the agreement of sale for Rs.1,95,000/- and paid advance of Rs.1,80,000/- and balance consideration of Rs.15,000/- is agreed to be paid at the time of

registration and that the wife of the tenant also filed O.S.No.361 of 1995 before the Principal Senior Civil Judge, Guntur. Ex.B.2 is the agreement, which is basis for the claim of the tenant that the default is not willful. Thus, the case of the tenant is clear that in view of the agreement of sale i.e Ex.B.2, he did not pay rent for the premises from December, 1995 to March, 2001 @ Rs.1,000/-. Though, the tenant denied the rent payable for the premises, but he admitted in his evidence that initially the rent was Rs.300/- per month and agreed to enhance rent at 10% for every two years. If the admission is accepted and calculated the rent as on the date of filing the eviction petition, the rent payable for the premises is Rs.1,000/- per month. Thus, the landlord established that the rent payable for the premises was Rs1,000/- per month as on the date of filing RCC.

11. Non payment rent for the period from December, 1995 to March, 2001 is only due to Ex.B.2-agreement entered into by the wife of the tenant with the landlord, but that is subject matter of other suit. However, even as per the recitals of Ex.B.2, the vendor agreed to deliver vacant possession of the property on the date of execution of the registered sale deed and it is not possessory agreement of sale. According to Section 54 of the Transfer of Property Act, agreement to sell will not confer any right or interest over the immoveable property to the purchaser. Therefore, the tenant of the wife, being vendee under Ex.B.2 will not get any title to the property and not entitled to claim any interest in the property except to claim specific performance of agreement of sale. Even assuming for a moment, she purchased the property under agreement of sale, still

the occupation of this premises as a tenant is deemed to be continuing and wife and husband are totally two different persons under law and husband is not an agent of wife.

12. This Court in **M/s Jawaharlal Daima and Co., v Ch.Chittemma and another**¹ had an occasion to decide an identical issue and held that:

“If the wife has her own property the presumption is that she acts on her own authority. The ancient doctrine that the husband and wife are one person is not true in modern times. The wife cannot be reduced to a subordinated position in respect of her property matters by the application of the doctrine of implied agency. The obligation on the part of the husband to meet the requirement of his wife stems from the fact of cohabitation in a domestic establishment. By implied authority the wife acts as the agent of the husband making the latter liable for the expenditure incurred by her in respect of necessities of life. There cannot be any such implied authority in a case where the wife owns separate properties. Marriage will not make the husband an agent of the wife to deal with her property matters without her authority. By virtue of marriage a husband has no authority to contract on behalf of his wife.”

13. Thus, legal position is obvious that there is no implied authority in favour of the husband in respect of the separate properties of the wife, having regard to the clear legal position, the theory propounded that there has been implied authority, cannot be countenanced in view of the law

¹ 1989(1) ALT 335

declared by this Court in **Kalipatnapu Atchutamma v Kommana Sambamurthy (died) per L.Rs and others**² .

14. In **Manu/AP-318/2007 (Badiga Phanibhushana Rao and another v Mathi Venkata Krishna Kutumba Rao and another and Talluri Nagaraju v Mathi Venkata Krishna Kutumba Rao and two others**, the single Judge of this Court in A.S.No.2106 of 1991 and 421 of 1993, judgment dated 10.08.2007, held that when there is no implied or express agency between father and son, execution of agreement by the son is not binding on the alleged principal and relief of specific performance cannot be granted as they approached the Court with unclean hands since relief of specific performance cannot be granted as they approached the Court with unclean hands.

15. In view of the law laid down by the Court, it is clear that there is no implied agency between the wife and the husband and wife entered into agreement with the landlord, the tenant in occupation of the property i.e. husband will not get any benefit on account of agreement allegedly entered into by his wife, the tenant is still liable to pay rent for the premises in view of the recitals of Ex.B.2, wherein the landlord allegedly agreed to deliver vacant possession of the property on the date of execution of registered sale deed and ExB.2 is only non possessory agreement and further agreed to evict the tenants in occupation and deliver possession. This itself suffice that the tenant is not continuing in possession as representative of the purchaser of the property under agreement of sale, but only as tenant. Therefore, the tenant is under legal obligation to pay monthly rent as agreed. Failure to pay rent for such a long period

² 2003(3) ALT 82

amounting to Rs.64,000/- despite legal notice Ex.A.1, amounts to deliberate and calculated default in payment of rent. Non payment of rent for the premises for the period from December, 1995 to March, 2001 constitute willful default, it is a ground to order eviction of the tenant under Section 10(2)(i) of the Rent Control Act. The appellate authority rightly ordered eviction reversing the findings recorded by the Rent Controller, which warrants no interference by exercising power under Section 22 of the Rent Control Act.

16. In the result, the civil revision petition is dismissed confirming the findings recorded by the Principal Senior Civil Judge, Guntur in R.C.A.No.30 of 2004, dated 14.10.2011. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

01.03.2018
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