

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CRP.No. 4243 of 2009

JUDGMENT:

This revision petition is filed against order dated 27.07.2009 in RA.No.203 of 2005 passed by the Additional Chief Judge, City Small Causes Court, Hyderabad reversing the order dated 20.07.2005 in RC.No.47 of 2003 passed by the III Additional Rent Controller, Hyderabad.

RC.No.47 of 2003 is filed by one Mohd. Dastagir against his tenant Shaik Sadiq Ali for eviction from the premises bearing Dr.No.15-8-517/4 on the grounds of wrongful denial of landlord's title and default of rent. The respondent tenant denied the case of the landlord. In RC.No.47 of 2003, evidence was let in after the pleadings were completed. The petitioner/landlord examined himself as PW.1 and marked Exs.P.1 to P.14. Respondent/tenant examined himself as RW.1 and marked Exs.R.1 to R.16. After considering the oral and documentary evidence, the Rent Controller dismissed the application filed for eviction.

Thereafter, the landlord filed an appeal before the Additional Chief Judge and Appellate Authority under the Rent Control Act in RA.No.203 of 2005. It appears from the record that the witnesses were recalled in the appeal and Exs.P.15 to P.17 were marked for the petitioner/landlord and Exs.R.17 and R.18 were marked for the respondent/tenant.

The learned Appellate Authority allowed the appeal and directed eviction of the tenant both on the ground of wilful default and wrongful denial. It is this order dated 27.07.2009 that is challenged in the present revision petition.

This Court has heard Sri K.K.Waghray, learned counsel for the petitioner and Sri Ali Farooque and MAK Mukheed, learned counsel for the respondents. The parties are referred to as landlord and tenant only for convenience.

The crux of the matter, as can be seen from the pleadings and the case in RC.No.47 of 2003, is as follows: Landlord is the owner of premises bearing No.15-8-517/4. He pleaded that he and the tenant entered into a lease deed/rental agreement dated 01.04.1987. The tenant was inducted into the premises and the tenant/respondent regularly paid the rents till 1998 but committed default from January, 1999 to February, 2002. He also pleads that the respondent wrongfully denied the title of the landlord. Hence, he sought eviction.

In reply to this, the respondent states that the denial of title is genuine as the respondent came to know that the landlord did not have any right over the said property and that the A.P.State Wakf Board is the true owner of the premises. The respondent denied that there is a default in payment of the rent. Parties went to trial and the first order

dated 20.07.2005 came to be passed. This was reversed in the impugned order.

The learned counsel for the petitioner relied upon **Abdul Rehman v. Saraswathi Prasad Singh**¹ and argued that if the tenant can show that the landlord does not have title, the non-payment of rent and the denial of title are valid. The learned counsel pointed out that in this case of **Abdul Rehman** (1 supra), before the learned single Judge of the High Court also the vendors of the respondent landlord did not have title and therefore, the Court held that the owner did not have any right in the property.

In response to this, the learned counsel for the respondent relied upon section 116 of the Evidence Act and the decision in **Jaspal Kaur Cheema and Ors. v. Industrial Trade Links and Others**², which is to the following effect:

“Section 116 of the Evidence Act deals with estoppel of a tenant founded upon contract between the tenant and his landlord. It enumerates the principle of estoppel which is merely an extension of principle that no person is allowed to approbate and reprobate at the same time. The tenant who has been let into possession cannot deny his landlord's title. In **Mt. Bilas Kunwar v. Desraj Ranjit Singh and Ors.** (AIR 1915 Privy Council 96), it was held that a tenant who

¹ 2008 (5) ALD 163

² 2017 (6) ALD 52

has been let into possession cannot deny his landlord's title, however, defective it may be, so long as he has not openly restored possession by surrender to his landlord.”

He further argued that the tenant who obtained premises from the landlord cannot deny the contract or the title of the landlord. He cited the following cases:

(1) ***Mohd. Shafi v. Hafeez Mohammed (died) by legal representatives***³

(2) ***Sri Ram Pasricha v. Jagannath and others***⁴.

(3) ***Rita Lal v. Raj Kumar Singh***⁵.

(4) Order of a learned single Judge in CRP.No.1516 of 2017.

Based on these cases and also ***Suresh Kumar v. Mohd. Dastagiri***⁶, wherein the present landlord himself was the respondent, the learned counsel argued that the tenant cannot deny the title of his landlord.

On facts, the learned counsel pointed out that Ex.P.5 is the lease deed dated 01.04.1987 relating to the premises 15-8-517/4. This document is signed by the tenant and the landlord, who are the petitioner and the respondent in the present revision. Learned counsel pointed out that under this

³ 2008 (2) Andh LD 49

⁴ AIR 1976 SC 2335

⁵ AIR 2002 SC 3341

⁶ 2013 (6) ALD 397

document, from 1987 till about 1999, the rent was paid unconditionally. He then relied upon Ex.P.6-plaint, which was filed by the present respondent/tenant against the landlord and also the A.P.State Wakf Board. In para 2 of the plaint, it is clearly admitted by the plaintiff that he obtained suit schedule premises on lease from the defendant No.1-landlord. Learned counsel also relied upon the certified copies of the judgment in OS.No.1856 of 1992 which is the decree in the suit passed in Ex.P.6 wherein the Court held that the plaintiff is the tenant of the landlord. He also relied upon the deposition of the present petitioner in another proceeding in OS.No.55 of 2000 which is marked as Ex.P.14. The learned counsel pointed out that the petitioner, as a witness on 02.02.2002, while deposing, clearly admitted that he has executed a rental deed in respect of the premises bearing Dr.No.15-8-517/4 and obtained premises on rent from the present landlord. He also admitted as follows: "I gave evidence in OS.No.1856 of 1992 that the suit mulgi belonging to D.1 as owner of landlord and I obtained suit premises from him." The witness also admitted that Ex.B.3 is the certified copy of the deposition in OS.No.1856 of 1992. He further stated that "what I deposed in Ex.B.3 is correct". This was followed by another admission when he deposed as follows: "I am accepting D.1 as the owner and landlord of mulgi No.15-8.517/4". Learned counsel also pointed out that on 12.02.2002, the witness was further cross-examined and

he again admitted as follows: “I took the suit mulgi from first defendant in 1984. I obtained suit mulgi on rent from D.1. I paid rent to D.1 up to 1999”. The learned counsel argued that in more than one place and on oath in solemn legal proceedings, the witness/present appellant had admitted that the landlord is the actual owner of the mulgi/house in question. Therefore, it is his contention that in view of these clear and categorical admissions in the most solemn legal proceedings the appellant cannot deny the landlord’s title. He pointed out that Section 116 of the Evidence Act, clearly and squarely applies to the facts of the case.

Learned counsel also pointed out that the contention of the tenant that the suit property belongs to the Wakf Board is also not correct and he relies upon the contents of Ex.R.11-Gazette (by which it is asserted that the Wakf Board is the owner) and shows that it pertains to 108 square yards of land and property bearing Dr.No.15-8-517/3 which is not the property covered by the present litigation.

The learned counsel for the petitioner, in reply, argued that the property belongs to the A.P.Wakf Tribunal and that the Wakf Board is agitating about its title in a Court of law. Since there is a genuine dispute about the title which has not attained finality, the petitioner argues that his denial of the landlord’s title is correct. He also argued that the additional documents that were filed and marked also proves that the

landlord has sold his property and that Exs.R.17 and 18 show the transfer of title.

In reply to this, the counsel for the respondent/landlord argued that his client has expressly denied the execution of those two documents. In addition, he pointed out that WP.No.4810 of 1978 is the copy of the order passed by the Hon'ble High Court of A.P. in Ex.P.15, wherein the High Court directed that the Wakf Board should file a separate suit to establish its title to the property.

On an examination of the entire facts in this case including the case law cited, this Court is of the opinion that the tenant/appellant has more than in one place admitted that he has taken the premises on lease from the first respondent/landlord only. The lease deed which has been filed is of April, 1987. From April, 1987 onwards till the time the alleged dispute was raised by the Wakf Board, the tenant continued to pay rent to the landlord thereby acknowledging that the premises belong to the landlord himself.

The case law that is cited makes it very clear that the tenant cannot deny the landlord's title. Even if the title of the landlord is defective, still the tenant cannot deny the title. In fact, in ***Mohd. Shafi v. Hafeez Mohammed (died) by LRs.***⁷, learned single Judge clearly held that however defective a landlord's title is, still the tenant cannot contend that the

⁷ 2008 (2) ALD 49

landlord has no right after it is established that he was paying rent. In that case before the learned single Judge also, the tenant raised a similar objection that the property belongs to the Wakf Board. The contention was negated by the learned single Judge. Similarly, the findings in **Suresh Kumar's case (6 supra)** and **Rita Lal's case (5 supra)** are also squarely applicable to the case on hand. The learned counsel also strongly relied upon **Suresh Kumar's case (5 supra)**, where the landlord in the present appeal is also the respondent in the said appeal. That case before the learned single Judge had similar facts and circumstances and related to the property situated in Feelkhana, Begum Bazar, like the present property. The respondent in that case is the deceased first respondent in the present appeal. The learned single Judge clearly held in paragraph 9 that once the relationship between the parties was covered by a rental deed, it is not open to the petitioner to deny the title of the respondent even if there exists a dispute between the respondent and a third party. In the case before the learned single Judge also, a plea was raised that the Wakf Board is the owner of the property. Still the learned single Judge held that the appellant tenant had no reason or ground to deny the title of the landlord.

In the light of the clear and categorical language of Section 116 of the Evidence Act and the settled case law on the subject, it is clear that the present petitioner has no right

to deny his landlord's title to the property. The admissions of the present tenant/respondent in more than one legal proceeding makes it very clear that he has accepted the deceased first respondent as his landlord. Both by virtue of the law and by virtue of the express admissions, this Court is of the firm opinion that the petitioner does not have any case at all and cannot question the title by his landlord. The reason given by the tenant for failure to pay the rent is also not correct. The tenant/respondent is clearly in breach/default of payment of rent. The order that is impugned in the present revision which is passed by the Appellate Authority in RA.No.203 of 2005 dated 27.07.2009 is thus confirmed. There are no merits in the revision and the petitioner is directed to vacate and handover vacant possession of the schedule premises within 45 days from the date of this judgment.

In the result, the revision petition is dismissed with costs of Rs.10,000/- payable by the petitioner to the respondents.

As a sequel, miscellaneous petitions, if any, pending in this revision shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: 08.06.2018

KLP