

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRP No.1766 OF 2018

ORDER ::

The respondent in ATC No.41 of 2004 is the revision petitioner herein. The petitioner in the said ATC No.41 of 2004 is respondent herein, filed the said ATC under Sections 16 and 13 of the Andhra Pradesh (Andhra Area) Tenancy Act for eviction of the revision petitioner. For brevity, parties will be referred to as they are arrayed in the ATC.

2. The trial Court by order dated 21-07-2008 allowed the petition filed by the petitioner (respondent herein). Aggrieved thereby, the respondent (revision petitioner herein) carried the matter in appeal, being ATA No.22 of 2008. It is a matter of record that earlier, civil revision petition was filed being CRP No.2964 of 2011 against the order passed in ATA No.22 of 2008 whereby the lower appellate Court allowed the ATA No.22 of 2008 and held that the trial Court erred in giving a finding as to the title of the petitioner to the subject land and that the petitioner failed to prove the landlord and tenant relationship between the parties and therefore cannot seek for eviction for default of tenancy conditions. This Court

remanded the matter to the file of lower appellate Court to decide two points; *viz.*, (i) whether there is jural relationship of landlord and tenant between the petitioner and the respondent ? and; if so, (ii) whether the respondent has committed default in payment of maktha ?

3. The impugned order in this revision is passed pursuant to the remand of the matter by this Court. By the impugned order, the lower appellate Court recorded a finding that the petitioner leased out the subject property to the respondent and there is *jural* relationship of landlord and tenant and the respondent committed default in paying maktha. Aggrieved by the same, this revision petition by the respondent.

4. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent. Perused the impugned judgment passed by both the Courts below.

5. The respondent (revision petitioner) in ATC No.41 of 2004 and the petitioner are bothers. While it is the case of the respondent that after the death of their father, when the petitioner sold away Ac.1-01 cents of land from out of the total property to third parties, which according to him is an

ancestral property, the petitioner agreed to relinquish his share over the subject property and handed over the same to the respondent and his brother Rama Rao and they have been in possession and enjoyment of the same by leasing it out to RWs.4 and 5 and there is no jural relationship muchless landlord and tenant relationship between them, on the other hand, the case of the petitioner is that he is the owner of the subject property by virtue of Ex.A-1 Will deed and contend that there is jural relationship with the respondent.

6. It is to be seen that the petitioner filed two suits being OS No.701 of 2004 and OS No.615 of 2008 against the respondent (revision petitioner) for recovery of maktha and it is a matter of record that both the suits are decreed in favour of the petitioner and the execution petitions filed to execute the decrees in the above suits were also closed on recording satisfaction of the decree. As rightly observed by the lower appellate Court, the respondent did not take any steps to file appeals against the judgment and decrees passed in the above two suits and allowed the judgments and decrees to become final. The sequence of events itself demonstrate that the respondent committed default in payment of maktha and the

legal proceedings initiated against him by the petitioner ended against him. From this it can be safely concluded that the petitioner has leased out the subject property to the respondent and he committed default in payment of maktha pursuant thereto the above suits were filed for recovery of maktha. Even the witnesses examined by the respondent as RWs.4 and 5, though stated that they have been cultivating the subject property at the instance of the respondent, they do not know who is paying the taxes and who is the owner of the subject property. No documents were filed to show even RWs.4 and 5 cultivated the subject lands. The order passed by the lower appellate Court does not suffer from any illegality or irregularity warranting interference by this Court. In the circumstances, the civil revision petition fails and it is accordingly dismissed. Miscellaneous petitions, if any pending in this case shall also stand dismissed. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

Dated: 06-07-2018
NRG

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