

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2023 of 2018

ORDER:

1) Assailing the order dated 19.03.2018, passed in I.A.No.1242 of 2017 in ATC No.3 of 2017 on the file of the Principal Junior Civil Judge, Kakinada, wherein an application filed Under Order I Rule 10 of C.P.C. to add the petitioner/ third party as respondent No.2 in the ATC was dismissed, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The 1st respondent herein filed the above A.T.C. against the 2nd respondent herein seeking the following reliefs:

1. to declare that the petitioner is the cultivating tenant in the petition schedule property;
2. to grant consequential permanent injunction restraining the respondent and his men from ever interfering with petitioner's peaceful possession and enjoyment of the petition schedule property;
3. to declare that the petitioner is having pre-emptive right of purchase of the petition schedule property;
4. to grant consequential permanent injunction restraining the respondent from alienating the petition schedule property to third parties.
5. to grant costs of the petition and
6. to grant such other reliefs that are necessary in the interests of justice.

During pendency of the A.T.C. the petitioner herein filed I.A.No.1242 of 2017 seeking his impleadment in the A.T.C. stating

that he purchased the plaint schedule property from the 2nd respondent herein on 25.10.2016 under a registered sale deed bearing document No.5030 of 2016. He claims to be in peaceful possession and enjoyment of the property by cultivating the same personally from the date of purchase. The revenue authorities also issued pattadar pass book and title deed in his favour recognizing his right and possession over the said property. To protect his rights over the property, he seeks impleadment in the A.T.C.

3) A counter came to be filed by the 1st respondent herein stating that he took the petition schedule property on lease from 01.06.2009 agreeing to pay 50 Kata bags rent to the 2nd respondent every year. The 1st respondent is regularly paying the rent and also obtained receipts from the 2nd respondent. It is stated that he did not commit any default at any time. He also received various government benefits/loans for raising crops. As the 2nd respondent threatened the 1st respondent, he filed the above case. It is also stated that the petitioner obtained a collusive sale deed and he never raised any crop. The sale deed was created only to defeat the rights of the 1st respondent. It is also stated that the Court has no jurisdiction to entertain any claim by third party. It is urged that in view of the disputes between the 1st respondent and 2nd respondent, the 2nd respondent colluded with the petitioner and got filed the present petition.

4) After considering the rival submissions the trial Court dismissed the said application. Challenging the same the present revision came to be filed.

5) Learned counsel for the petitioner would submit that the petitioner herein purchased the property from the 2nd respondent through registered sale deed and the revenue authorities also issued pattadar pass book and title deed in his favour, hence he would be a necessary party to the proceedings.

6) Learned counsel for the 1st respondent would submit that the revision itself is not maintainable. According to him, as per Section 16 (2) of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (for short "the Act"), an appeal would lie against any order passed by the Special Officer.

7) Before proceeding further, it is to be seen whether a revision is maintainable against an interlocutory order passed in A.T.C.

8) Section 16 (2) of the Act reads as under:

“16. Adjudication of disputes and appeal:

1) xxxxxxxxxxxxxxxxx

2) Against any order passed by the Special Officer under this Act an appeal shall lie to the District Judge having jurisdiction, within thirty days of the passing of the order; and the decision of the District Judge on such appeal shall be final.”

9) Section 16 (2) clearly lays down that against any order passed by the Special Officer under the Act, an appeal shall lie to the District Judge, having jurisdiction within thirty days of the passing of the order.

10) In *A.C.M.L.Prasad and others v. Shaik Madar @ Shaik Lal*¹, a learned Single Judge of this Court passed the following order:

“1. Both these revisions can be disposed of by a common order. The revision petitions are filed by the landlord. The lower Court condoned the delay in filing the application to set aside ex parte decree dated 8-6-1990 in ATC No.9 of 1990 and dated 26-7-1991 in ATC No.4 of 1990, against the said orders, the present revisions are filed.

2. A preliminary objection was taken by the learned Counsel for respondent that under [Section 16\(2\)](#) of A.P. (A.A.) Tenancy Act, 1956, an appeal lies to the District Court and therefore the revision is not maintainable. He also submits that the present revisions filed under Section 115 of CPC are not maintainable in view of the amendments made to Civil Procedure Code.

3. Learned Counsel for petitioner, however, submits that de hors the appeal provision, it is always open for this Court to entertain the revision when the order passed is without jurisdiction.

4. I am afraid, I cannot accept the said contention. Section 16(2) of the Act, reads as under:

"Against any order passed by the Special Officer under this Act, an appeal shall lie to the District Judge having jurisdiction, within 30 days of passing of the order; and

¹ (2004) 5 ALD 390

(he decision of the District Judge on such appeal shall be final."

5. Therefore, by virtue of sub-section (2) of Section 16, against any order passed by the Special Officer, an appeal lies to the District Court having jurisdiction.

6. In the above circumstances, the revisions under Section 115 of CPC or Article 227 of the Constitution of India are not maintainable and the petitioner has to seek the appeal remedy as provided under Section 16(2) of the Act. Accordingly the revisions are dismissed. However, this order, does not preclude the petitioner from approaching the Appellate Court, if he so chooses. No costs."

11) In *Hameed Kunju v. Nazim*², the Apex Court dealt with an issue "whether the High Court was justified in allowing the writ petition filed by the respondent-tenant under Article 227 of the Constitution and was, therefore, justified in interfering with the orders of the trial Court impugned therein and, in consequence, justified in remanding the case to the trial Court for deciding the eviction petition de novo on merits with specific directions to the trial Court? After considering the facts and circumstances of the case, the Apex Court held as under:

"23. In our considered view, there was no case made out on facts or/ and in law by the respondent for entertaining his writ petition and interfere with the orders impugned therein.

24. In the first instance itself, the High Court in our view, should have dismissed the writ petition in limine on the ground that since all the four orders impugned in the writ petition were amenable to their challenge before the

² (2017) 8 SCC 611

appellate authority, the writ petition was not the proper remedy without first filing the appeal and get the same decided by the appellate Court on its merit in accordance with law. In other words, the High Court should have declined to entertain the writ petition under Article 227 on the ground of availability of an alternative remedy of appeal to the respondent. Indeed the respondent had actually filed appeal in the first round of litigation against the orders of the trial Court”.

12) In view of the judgments referred to above and Section 16 (4) of the Act, the petitioner if aggrieved by any order passed by the tenancy Court, he can challenge the same by way of filing an appeal before the appropriate Court.

13) Accordingly, the Civil Revision Petition is dismissed as not maintainable. The petitioner is at liberty to avail the remedy available under law. The Registry is directed to return the originals, if any, in accordance with law, enabling the petitioner to prefer an appeal under Section 16 of the Act. The petitioner shall prefer an appeal within a week of receipt of originals, if any, in which event the trial Court shall consider the same in accordance with law. There shall be no order as to costs.

14) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

13.07.2018
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