

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

**C.R.P.No.3711 of 2010 and
CRP MP Nos.8476 of 2016 & 764 of 2017
in CRP No.3711 of 2010**

ORDER:

This Civil Revision Petition is filed against the order dated 23.03.2010 passed in R.A.No.53 of 2009 passed by the Additional Chief Judge, City Small Causes Court, Hyderabad-cum-Appellate Authority.

The said order was passed in an appeal filed against R.C.No.318 of 2007, which was filed before the I Additional Rent Controller, Hyderabad, by one Ramesh Kumar Sarda against Kamal Kishore Kasat under Section 10 (2)(i) and 10 (3)(iii) of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 (for brevity 'the Rent Control Act') seeking eviction of the respondent from the premises bearing door NO.23-6-434.

The case before the first Court was that the petitioner is the owner of the premises and the respondent is the tenant. Stating that the respondent committed default in paying rents and also claiming need of the premises of schedule mulgi for personal use and occupation, the application was filed for eviction. The respondent strongly denied the case set up and pleaded that he is not a tenant; that he is in possession of the premises as an 'owner' having inherited the same by succession and denying the title of the landlord. He also denied the existence of the landlord-tenant relationship.

The I Additional Rent Controller (first Court) after examining all the witnesses etc., passed orders dated 19.03.2009 holding that the petitioner has failed to establish the landlord and tenant jural relationship. Therefore, the RC was dismissed. Against the same, an appeal was filed and by orders dated 23.03.2010, the appellate Court also confirmed the orders of the first Court. Against the said order, the present revision is filed.

This Court has heard Sri Damodar Mundra, learned counsel for the revision petitioner and Sri Tejprakash Toshniwal, learned counsel for the respondent.

The crux of the matter as was argued by both the learned counsel appearing for the parties is about the existence of the jural relationship of landlord and tenant between the petitioner and the respondent.

The learned counsel for the petitioner argued that the denial of title by the respondent is wrongful and that the petitioner is the lawful owner of the property. He pointed out that the petitioner has examined two witnesses and has filed the receipts dated 13.03.1994, 16.03.1994 and 17.03.1994 to show that the respondent has paid rents. He also pointed out that the gift settlement deed, which is his title deed, is filed by the respondent himself. He also pointed out that PWs.1 & 2 deposed about the landlord-tenant relationship. Therefore, he contended that all that is necessary to be proved in the Rent

Control Case was done by his client and that both the Courts strongly erred in rejecting his contentions.

In reply thereto, the learned counsel for the respondent pointed out that there is no clear pleading about the commencement of the tenancy, about the continuation of the tenancy or about the payment of rents. He also strongly urged that the title of the petitioner is not clear and that a suit for partition of the very same property was filed by his client's mother in O.S.No.507 of 2008 on the file of VI Senior Civil Judge, City Civil Court, Hyderabad and therefore, according to him, there is a serious cloud on the title of the petitioner. Hence, he urged that the denial of the title is correct.

The *sine qua non* for invocation of jurisdiction of the Rent Controller is the existence of a landlord-tenant relationship between the petitioner and the respondent. The Rent Control Act is a special Act, which comes into play under certain circumstances and also provides for eviction, on certain grounds. To invoke the jurisdiction of the Rent Controller, the landlord must prove the jural relationship of landlord and tenant. A perusal of the petition filed shows that there is no documentary proof/lease deed evidencing the tenancy. The petition does not disclose any details of the tenancy. The payment of rents; the period of tenancy etc., are not clearly mentioned. It is not clear if the respondent was a tenant of the petitioner's father or of the family prior of 2006, since the petitioner claims title, vide Ex.R.1 gift settlement

deed dated 05.06.2006. The receipts which he relied upon are all of March, 1994. There is no pleading for the position that the respondent was a tenant of the petitioner's father prior to 1994 and that thereafter when the petitioner acquired the property upon gift deed of year 2006, the tenancy was also attorned to him. The respondent in his counter has clearly mentioned that at no point of time he paid the rents and that the petitioner is not the owner of the said mulgi. In the light of this clear averment, a greater duty is cast upon the petitioner to prove his title and the tenancy, but the same was not done.

The petitioner relied upon three documents, which are marked as Exs.P.2 to P.4, which are of March, 1994 only. As per the respondent, there is no explanation let alone clear explanation forthcoming as to what happened for the rents prior to and after these three receipts. Ex.P.2 is for 1988 to 1990, Ex.P.3 is for 1990 to 1992 and Ex.P.4 is for 1992 to 1994, as can be seen from the documents. The respondent has denied his signatures on the said documents. Therefore, a duty was cast upon the petitioner to explain the contents of these receipts. Admittedly, the petitioner's title to the property started in 2006 only as per the petition averments. Therefore, the existence of a landlord-tenant relationship prior to 2006 should have been established by categorical and clear pleading and evidence. This was not done. The respondent argued that the petitioner should have been pleaded and

proved that the ownership of the mulgi in question was with another landlord prior to 2006 and that thereafter he acquired the same along with the tenant by the gift settlement deed, which is marked as Ex.R.1. The same was not done, as per the counsel.

The learned counsel for the respondent pointed out that unless a person connected with the document is examined, these three documents cannot be treated as proved. As noted by the appellate Court, the petitioner did not take any steps to examine his father, who is supposed to have issued these three receipts. Once the respondent denies his signatures or otherwise, the contents of the documents come into an issue, and a duty was cast upon the petitioner to examine somebody connected with the documents. The case law, which is relevant for, is ***Bishwanath Rai v. Sachhidanand Singh***¹, which clearly mandates that where the truth of the contents of the document was an issue, the author of the document should have been examined in this case. Nobody connected to Exs.P.2 to P.4 were examined to prove their correctness or otherwise.

Even otherwise, this Court holds that even if Exs.P.2 to P.4 are held to be proved, they do not prove either the commencement of the jural relationship of landlord-tenancy or its continuance in favour of the present petitioner for this

¹ AIR 1971 SC 1949

case. There is neither pleading nor evidence to prove the same.

The learned counsel for the petitioner also argued that after the denial of the signatures, his client has filed an application in IA No.365 of 2008 to send the documents for an expert opinion. He argued that the lower Court wrongly refused to send the documents for examination by an expert and in fact overlooked the same in the order that is passed. The learned counsel for the petitioner vehemently argued that the lower Court failed in its duty to send the documents to an expert and that on this ground the appeal is bound to succeed.

In reply thereto, the learned counsel for the respondent submitted that the application was rightly rejected by the lower Court as it is filed in 2008 at the very fag end of the matter and when the matter was posted for arguments. He also points out (rightly says in the opinion of this Court) that even if the lower Court committed an error in failing to pass an order in IA No.365 of 2008, the petitioner had a remedy under law to challenge such an order and invite a finding from the appellate Court against the rejection of the application. He argued strongly that if the petitioner was aggrieved by the rejection of the said application and if obtaining the expert opinion was so important, the petitioner should have been taken steps to challenge the order passed

in IA No.365 of 2008. He pointed out that except arguing about the rejection, no steps were taken.

This Court on a review of the oral and documentary evidence adduced and documents that are filed in the Court has to conclude that the petitioner has failed to plead and prove the commencement of the tenancy, the attornment of the tenancy, the continuation of the tenancy etc. The mere fact that the petitioner and the respondent are closely related to each other will not absolve the petitioner to prove that he was the landlord and the respondent was his tenant. In the opinion of this Court, the petitioner failed to prove that there was a pre-existing tenancy which was passed on to him from his father. None of the other tenants were examined to prove the landlord and tenant relationship between the petitioner and the respondent. The petitioner's father was not examined to prove the contents of the gift deed to the effect that he was enjoying the property as a landlord and collecting rents from 16.09.1971 (date of his mother's Will) till 05.06.2006, the date of Ex.R.1-gift settlement deed in favour of the present petitioner. The trade licence; MCH license etc., would have revealed the status of the respondent as a tenant as owner. Suggestions were put in cross-examination about the same but were not followed up. The other tenants in the building were not examined also.

In the absence of any pleading and proof, this Court concurs with the findings of both the Courts below that the

landlord/petitioner failed to prove the existence of a jural relationship between the petitioner and the respondent. The same is a pre-condition for the initiation and the prosecution of the application. Hence, this Court holds that both the Courts below were right and there was no error committed by the appellate Court in passing the impugned order dated 23.03.2010.

The other issues that survive for consideration are CRP MP No.8476 of 2016 by the petitioner and CRP MP No.764 of 2007 by the respondent in the CRP to receive additional evidence.

The petitioner wants to file a certified copy of the decree and judgment in O.S.No.507 of 2008 on the file of VI Senior Civil Judge, City Civil Court, Hyderabad. This suit was filed by the respondent's mother for a partition and allotment of suit schedule property to her share. After the respondent's mother died, the respondent is added as plaintiff No.2 to the suit. The said suit was dismissed by the judgment and decree dated 01.06.2016. To prove that the denial of title by the respondent is not correct, the petitioner wants to file a copy of the said judgment and decree in O.S.No.507 of 2008. The respondent on the other hand wants to file a copy of the appeal grounds filed in A.S.No.146 of 2006 on the file of the IX Additional Chief Judge, City Civil Courts, Hyderabad against very same judgment and decree dated 01.06.2006 in O.S.No.507 of 2008. From a reading of both CRP MPs, it is

clear that even though the suit was dismissed an appeal is pending against the same. Therefore, this Court is of the opinion that the issue of title raised by the tenant is still pending adjudication. By receiving these documents, the case of either parties will not be advanced further. To enable this Court to pronounce the judgment, these additional documents are not really conclusive. The only ground under which this could be produced was under Order 41 Rule 27 (b) CPC. There is neither substantial cause nor will the judgment and appeal grounds proposed to be filed be useful for pronouncing the judgment. Therefore, both CRP MP Nos.8476 of 2016 and 764 of 2017 are rejected.

In the result, the Civil Revision Petition is dismissed. The order dated 23.03.2010 passed in R.A.No.53 of 2009 passed by the Additional Chief Judge, City Small Causes Court, Hyderabad is confirmed. CRP MP Nos.8476 of 2016 and 764 of 2017 are rejected. In the circumstances of the case, there shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this revision shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 16.04.2018
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