

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.2752 of 2018

ORDER:

1 This Civil Revision Petition is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act'), challenging the order dated 20.03.2018 passed in R.A.No.57 of 2016 on the file of the Chief Judge, City Small Causes Court, Hyderabad, wherein and whereby the order dated 07.11.2015 passed in R.C.No.262 of 2008 on the file of the IV Additional Rent Controller, City Small Causes Court, Hyderabad ordering eviction of the petitioners herein from the petition schedule property and handover the vacant physical possession of the same to the respondent herein, was confirmed.

2 The facts leading to the filing of the present Civil Revision Petition, in nutshell, are as follows:

3 The petition schedule property – Mulgi bearing municipal D.No.14-1-22, admeasuring 29 sq. yards situated on main road of Mangalhat, Hyderabad originally belongs to one Phool Kumari. In the year 1950 the said Phool Kumari let out the petition schedule property to one Balaraju, who is the husband of the second petitioner and father of petitioner Nos.1, 3, 4, 5 and 6. While so, on 27.06.1985 the father of the respondent purchased the petition schedule property from Phool Kumari under a registered sale deed, in the name of the respondent as he was minor by that time. On the same day Balaraju executed a rental deed in favour of the respondent. The said Balaraju died in the year 1996. On 30.05.2008 the respondent got issued

a legal notice to the petitioners directing them to vacate the petition schedule property alleging that they committed default in payment of rent by which time the rent of the petition schedule property was Rs.2,000/- p.m. On 10.6.2008 the petitioners got issued a reply notice to the respondent denying the title of the respondent as well as the jural relationship of landlord and tenant between the respondent and the petitioners. Having no other alternative the respondent filed R.C.No.262 of 2008.

4 The petitioners filed counter, *inter alia*, contending that the father of the petitioners purchased the petition schedule property in the name of the respondent as security. There is no jural relationship of landlord and tenant between the respondent and the petitioners, therefore, the petition is not maintainable under law. The petitioners demolished the petition schedule property in the year 2003 and made constructions and hence the Rent Control Court has no jurisdiction to entertain the petition. It is the further case of the petitioners that they never paid rent to the respondent at any point of time as they are the owners of the petition schedule property. Hence the petition may be dismissed.

5 To substantiate the case, before the Rent Contoller, the first respondent herein examined himself as P.W.1 and got marked Exs.P.1 to P.8. The mother of the first respondent was examined as P.W.2. To demolish the case of the respondent, the first petitioner herein examined himself as R.W.1 and got

marked Exs.R.1 to R.28. R.Ws.2 and 3 were examined to prove that the father of the petitioners purchased the petition schedule property.

6 Basing on the oral, documentary evidence and other material available on record, the learned Rent allowed the petition directing the petitioners to vacate the petition schedule property and handover vacant possession of the same to the respondent within three months. Aggrieved by the order of the learned Rent Controller dated 07.11.2015, the petitioners preferred R.A.No.57 of 2016 on the file of the Chief Judge, City Small Causes Court, Hyderabad. The appellate authority dismissed the appeal. Hence the present Civil Revision Petition by the petitioners – tenants.

7 The learned counsel for the petitioners strenuously submitted that the Rent Controller has no jurisdiction to entertain the petition on the following two grounds:

- (i) The petitioners have demolished the petition schedule property and made constructions;
- (ii) There is no jural relationship between the respondent and the petitioners as landlord and tenants.

8 ***Per contra***, the learned counsel for the respondent submitted that in view of the jural relationship of landlord and tenant between the respondent and the petitioners, the petition is maintainable under the Act.

9 In order to appreciate the contention of the respondent, it is apposite to extract Section 32 (b) of the Rent Control Act, which reads as under:

32. Act not apply to certain buildings: The provisions of this Act shall not apply:

(a) x x x x x

(b) to any building constructed or substantially renovated, either before or after the commencement of this Act for a period of fifteen years from the date of completion of such construction or substantial renovation.

Explanation I: - A building may be said to be substantially renovated if not less than seventy five per cent of the premises is built new in accordance with the criteria prescribed for determining the extent of renovation;

10 A perusal of the above provision clearly demonstrates that if the petition schedule property was renovated to the extent more than 75% then the Rent Control Court lacks jurisdiction to entertain the petition filed under Section 10 of the Act. Therefore, it is manifest that establishment of ingredients of Explanation I of Section 32 of the Act is *sine qua non* to oust the jurisdiction of the Rent Controller.

11 It is needless to say that the parties to the proceedings may plead and depose evidence in such a manner to suit their case. R.W.1 is an interested witness whose testimony has to be scrutinised meticulously in order to eliminate the exaggerations. Except the self serving testimony of R.W.1, there is no other convincing evidence to establish that the petitioners demolished the old mulgi and constructed a new mulgi. In the cross examination R.W.1, in unequivocal terms, deposed that he has not obtained permission from the GHMC for making alterations to the petition schedule property. At one stage, he deposed that he made minor alterations, therefore, no permission is required

from the GHMC. It is a known fact that one has to obtain permission from the Municipal Corporation either for demolition or for making alterations to the building. In the absence of documentary evidence, it is not safe to place much reliance on the oral testimony of R.W.1. Even if the testimony of R.W.1 is taken into consideration the petitioners have made minor repairs to the building. The petitioners miserably failed to prove the ingredients of Explanation to Section 32 of the Act. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the petitioners that the Rent Controller has no jurisdiction to entertain the petition.

12 Establishment of jural relationship of landlord and tenant between the respondent and the petitioners is a condition precedent to entertain the petition under the provisions of the Act. It is the case of the petitioners that they are not tenants of the respondent. The respondent has taken a specific plea that there is no practice of issuance of rent receipts. As per the testimony of P.Ws.1 and 2, the father of the petitioners executed rental deed in favour of the respondent on 27.06.1985 (Ex.P.1). The respondent got issued legal notice Ex.P.4 wherein the respondent has taken a specific plea that the father of the petitioners executed a rental deed. The petitioners have taken a specific plea in Ex.P.5 reply notice that Ex.P.1 is a forged document. The petitioners have not taken any steps to send the rental deed along with the admitted signatures of Balaraju (father of the petitioners) in order to ascertain whether Ex.P.1

bears the signature of their father Balaraju. The petitioners have not produced any document which bears the signature of their father at least to facilitate the Rent Controller to compare the admitted signature of Balaraju with the disputed signature by exercising power under Section 73 of the Indian Evidence Act. Mere denial of a particular fact would not amount to proof of the same. The possibility of taking such a plea by the petitioners in order to overcome the legal consequences cannot be ruled out completely. Unless and until the contrary is proved, the Court can prima facie place reliance on the rental deed. As seen from the testimony of R.W.3, the father of the petitioners used to pay the rent to the father of the respondent till his death in the year 1996. The petitioners' witness fully supported the version of the respondent. The material available on record clinchingly establishes the jural relationship of landlord and tenant between the respondent and the petitioners. Viewed from any angle, I am unable to accede to the contention of the petitioners that the Rent Controller lacks jurisdiction to entertain the petition.

13 The next question that falls for consideration is whether the petitioners denied the title of the respondent bonafidely.

14 Before advertng to the facts of the case, it is apposite to refer to the case law cited by the learned counsel for the parties on this aspect.

15 The learned counsel for the petitioners has drawn the attention of this Court to ***Avulapalle Mallikarjuna v. N.T.***

Chengalarayappa¹. As per the principle enunciated in this case, if there is a serious title dispute between the landlord and tenant, the Rent Control Court has no jurisdiction to entertain the petition.

16 On the other hand, the learned counsel for the respondent has drawn the attention of this Court to **Keshar Bai vs. Chhunulal**² wherein the Hon'ble apex Court held at para No.14 as follows:

13. There is a specific reference to the registered document under which the appellant purchased the suit building from the earlier landlord in the plaint. Yet, in the written statement the respondent denied the title of the appellant. We notice that there are several documents on record relating to the ownership of the appellant, apart from the registered sale deed, such as municipal tax receipts, ration card etc. Yet, the respondent refused to acknowledge the appellant's title. He denied it in his evidence. This is not a simple case of denial of derivative title by a person who did not know about the purchase of the building by the landlord. Even after going through the relevant documents relating to the appellant's title the respondent feigned ignorance about it. The High Court has accepted that in his cross-examination the respondent has stated that he was not accepting the appellant as his landlady. The High Court has, however, gone on to say that by this piece of evidence no decree of eviction can be passed against the respondent under Section 12(1) (c) of the M.P. Act because the respondent will have no occasion to establish in what circumstances he denied the title of the appellant. The High Court has further held that the respondent was within permissible limit in asking the appellant to produce documentary evidence about his title as a landlord. The High Court, in our opinion, fell into a grave error in drawing such a conclusion. Even denial of a landlord's title in the written statement can provide a ground for eviction of a tenant. It is also settled position in law that it is not necessary that the denial of title by the landlord should be anterior to the institution of eviction proceedings. This is so stated by this Court in *Majati Subbarao v. P.V.K. Krishnarao* {(1989) 4 SCC 732}.

17 It is needless to say that burden of proof lies on the party who asserts a particular fact and desires the court to adjudicate the same in view of Section 101 of Indian Evidence Act. In the instant case, the burden of proof lies on the petitioners to establish that their father purchased the petition schedule property in the name of the respondent.

¹ 2010 (1) ALD 366

² (2014) 11 SCC 438

18 The testimony of P.Ws.1 and 2 clearly reveals that the father of the respondent purchased the petition schedule property under a registered sale deed dated 27.6.1985 in the name of the respondent. Ex.P.3 is the certified copy of the sale deed. It is not in dispute that by that time, the respondent was aged about 10 years only. It is the case of the petitioners that their father purchased the petition schedule property in the name of the respondent, but they have not explained the reasons which compelled the father of the petitioners to purchase the petition schedule property in the name of the respondent. It is the further case of the petitioners that their father entrusted the original of Ex.P.3 to the father of the respondent as security. As per the testimony of R.W.2, his father purchased one mulgi from Phool Kumari along with the father of the respondent. There is no documentary evidence to establish that R.W.2's father purchased one mulgi from Phool Kumari. As per the oral testimony of R.Ws.2 and 3, the father of the petitioners purchased petition schedule property from Phool Kumari under the original of Ex.P.3. It is not in dispute that the original of Ex.P.3 stands in the name of the respondent. Unless and until the contrary is proved, the court can place prima facie reliance on the registered sale deed. It is not the case of R.W.1 that he was present at the time of entrusting original of Ex.P.3 by his father to the father of the respondent.

19 In order to appreciate the rival contentions, the court can examine this aspect in a different way. If really the father of the

petitioners purchased the petition schedule property under the original of Ex.P.3 in the name of the respondent and delivered the same to the father of the respondent, what prevented him to take appropriate steps to take back the sale deed? No proper explanation was put forth by the petitioners for not taking appropriate steps by their father to get back the sale deed from 1985 to 1996 i.e. during the lifetime of their father. In the backdrop of this factual scenario, the test to be applied by the court is whether the petitioners or their father have acted as an ordinary prudent man or not. Neither their father nor the petitioners have taken any legal course for cancellation of the sale deed dated 27.6.1985 till filing of the R.C. by the respondent. All these facts negate the contention of the petitioners. After filing of the R.C. by the respondent, the petitioners have filed suit O.S.No.1210 of 2008 on the file of the Court of the I Additional Senior Civil Judge, City Civil Court, Hyderabad against the respondent for declaration and cancellation of the sale deed dated 27.6.1985. After full-fledged trial, the trial Court dismissed the said suit by decree and judgment dated 10.02.2014, vide Exs.P.7 and P.8. Feeling aggrieved by the said decree and judgment passed by the trial Court, the petitioners preferred A.S.No.123 of 2014 in the file of the Court of the XI Additional Chief Judge, City Civil Court, Hyderabad and the same is pending. Dismissal of the suit filed by the petitioners negates their contention. Execution of rental deed (Ex.P.1) by the father of the petitioners in favour of the respondent would certainly amount to accepting the title of the

respondent. The admission made by the father of the petitioners is binding on the petitioners. Viewed from this angle also, the stand taken by the petitioners falls to ground. The material placed before this court clinchingly establishes that the petitioners denied the title of the respondent with a malafides intention. There is no serious dispute with regard to the title of the respondent in respect of the petition schedule property, therefore, the principle laid down in **Avulapalle Mallikarjuna** (1 supra) is no way helpful to substantiate the case of the petitioners. On the other hand the facts of the case on hand are almost identical to the facts of the case referred to in **Keshar Bai** (2 supra).

20 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this court is of the considered view that the petitioners denied the title of the respondent with a *mala fide* intention. Denial of the title of landlord by the tenant with *mala fide* intention itself is a sufficient ground to evict the tenant from the plaint schedule property.

21 The respondent filed the R.C. on the ground that the petitioners committed wilful default in payment of rent from 2006 onwards. It is the case of the petitioners that there is no practice in issuing rent receipts. As per the terms and conditions of Ex.P.1 rental agreement, the tenant has to pay rent on or before 5th of every succeeding month. It is the case of the respondent that the rent was enhanced from time to time. It is

the further case of the respondent that the rent of the petition schedule property is Rs.2,000/- p.m. by the time of filing of the eviction petition. The petitioners denied everything. The testimony of R.W.3 clinchingly establishes that the father of the petitioners used to pay rents to the respondent up to May 1996. The recitals of Ex.P.1 coupled with the testimony of R.W.3 clearly reveal that the father of the petitioners used to pay rent to the respondent. It is not the case of the petitioners that they paid rent at the rate of Rs.2,000/- p.m. to the respondent from 2006 onwards. The material placed on record clinchingly establishes that the petitioners being tenants of the petition schedule property failed to pay rent to the respondent from May 2006 to April 2008. A tenant is not entitled to squat on the petition schedule property without paying rent. Wilful default in payment of rent is a valid ground to order eviction of tenant.

22 The contention of the learned counsel for the petitioners is that this court can set aside the concurrent finding of fact recorded by the authorities below if the findings recorded by the authorities below are perverse while exercising revisional jurisdiction under Section 22 of the Act. To substantiate the same, he has drawn the attention of this court to ***Vallampati Kalavathi v. Haji Simail***³ wherein the Hon'ble apex Court held at Para No.13 as under:

13. As the language of the section suggests, the revisional power vested in the High Court is to be used for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceeding, and if satisfied that the order/orders suffer any such vice the High Court may pass such order in reference to the proceeding as it thinks fit. The expression legality, regularity or propriety are undoubtedly wider than mere correction of

³ AIR 2001 Supreme Court 1441

jurisdictional error. But even such revisional power cannot be exercised to upset the concurrent findings of fact recorded by the Forums below merely on the ground that the High Court is inclined to take a different view on the materials on record in the case. We should not be understood to be saying that the concurrent findings of fact can in no case be interfered with in revision. For such interference it has to be shown that the findings recorded by the Forums below suffer from any inherent defect or are based on inadmissible or irrelevant materials or are so perverse that no reasonable person will come to such conclusion on the materials.

23 As per the principle enunciated in the case cited supra, if the findings recorded by the court below are based on no evidence or based on evidence, which is not legally admissible, then such findings can be termed as perverse. A perverse finding can be set aside by the revisional court while exercising jurisdiction under Section 22 of the Act.

24 In the instant case, the Rent Controller considered the oral and documentary evidence in right perspective and arrived at a conclusion that the petitioners have malafidely denied the title of the respondent and committed wilful default in payment of rent from May 2006 to April 2008. The findings recorded by the Rent Controller are fully supported by oral and documentary evidence placed on record. The Rent Control Appellate Authority, without being influenced by the findings recorded by the Rent Controller, arrived at an independent conclusion that the petitioners have denied the title of the respondent with an ulterior motive and mala fide intention and committed wilful default in payment of rent.

25 The findings recorded by the appellate authority are based on evidence much less legally admissible evidence. In such circumstances, I am unable to countenance the submission made by the learned counsel for the petitioners that the findings

recorded by the authorities below are perverse and therefore this is a fit case to set aside the concurrent finding of fact recorded by the authorities below while exercising jurisdiction under Section 22 of the Act. There is no illegality, irregularity or impropriety in the orders passed by the authorities below, which warrant interference of this Court while exercising jurisdiction under Section 22 of the Act. Hence there are no grounds much less valid grounds to interfere with the well considered orders of the authorities below and accordingly this Civil Revision Petition is liable to be dismissed as devoid of any merit.

26 In the result, the Civil Revision Petition is dismissed confirming the order dated 20.03.2018 passed in R.A.No.57 of 2016 on the file of the Chief Judge, City Small Causes Court, Hyderabad. No order as to costs. The petitioners are hereby directed to vacate the plaint schedule property and handover vacant physical possession to the respondent within three (03) months from today. As a sequel, miscellaneous petitions, if any connected to this Civil Revision Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Dt:10--07—2018

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