

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**CIVIL REVISION PETITION No.4041 OF 2018**

**ORDER:**

Heard both sides.

**2.** The revision petitioner is the tenant under the revision respondent-so-called landlord of the petition schedule property. R.C.C.No.5 of 2004 for eviction maintained before the learned Principal Junior Civil Judge, Kavali was ended in dismissal on merits by order dated 29.11.2007 holding no jural relationship of landlord and tenant between them. Impugning the same, the landlord maintained R.C.A.No.2 of 2018 before the learned Senior Civil Judge, Kavali, who reversed the same by judgment dated 19.06.2018 by passing the order of eviction. Impugning said reversal judgment of ordering eviction, the present revision is maintained.

**3.** The contentions in the grounds of revision vis-à-vis the oral submissions of the learned counsel for petitioner are that the appellate Court finding is perverse and unsustainable and in ignorance of the non-existing of the landlord tenant relationship between the petitioner and the respondent to the eviction petition concerned and there is no proof regarding the original title to claim under Ex.P1-possessory sale agreement dated

05.06.1985 in favour of the eviction petitioner, the so-called landlord, and the record shows somebody paid the tax from Ex.P5 receipts and thereby, the appellate Court finding in unsustainable and liable to be set aside by restoring the order of Rent Controller.

**4.** Before the Rent Controller covered by the dismissal order supra during trial, four witnesses were examined including the so-called landlord's father as PW2 and the so-called vendor as PW4 by name P.Seetha Ratnamma and one of the attestors to the document as PW3. The tenant came to the witness box as RW1 and got examined two more witnesses as RWs 2 and 3. Exhibits P1 to P7 and exhibits R1 to R6 are marked. Ex.R5 electricity bills placed reliance by the tenant shows in the name other than Seetha Ratnamma-PW4. In fact, Ex.P1 is the possessory sale agreement already exhibited. It is not a compulsory attestable document. The vendor of it came to the witness box and deposed in confirmation of the same as PW4 and it corroborates the evidence of PW1 and PW2. Thereby, the learned Rent Controller's finding in disbelieving the so-called document from PW3-attestor could not say the executant was signatory or marks woman is untenable for same is not a compulsory attestable document and thus not required of proof of

attestation as contemplated by Section 3 of the Transfer of Property Act (for short, 'the T.P. Act') with reference to Section 68 of the Indian Evidence Act, 1872. It is thus enough to say that the ownership of landlord-PW1 is proved and his father PW2 also came in support of it by denying the contest of the tenant of PW2 let out the premises to him. It is leave about the exchange of notices covered by exhibits P2 to P5 and R1 to R4, even for said contention of the tenant of PW2 let out the property to him, there is nothing to prove. The father of PW1 came to the witness box as PW2 as referred supra stated he has not right over the property and PW1 is owner of the property as referred supra. Once there is the possessory sale agreement by payment of entire sale consideration, even a suit for specific performance barred by limitation under Article 54 of the Limitation Act there is an equitable protection as a shield to protect the possession against all including against the true owner once he complies with the requirement of Section 53A of the T.P. Act and against others the possessory title of him protects. Leave apart, a tenant under Section 116 of the Indian Evidence Act, 1872 is estopped from denying the title of landlord from whom he has taken possession on lease even the title is defective. Once such is the case,

there is nothing to interfere with the lower appellate Court's reversal judgment though reasoning and conclusion is not with above observations, but otherwise. Even to implead the father of petitioner i.e., PW2, he is now no more undisputedly when the evidence of PWs 1 to 4 clearly proves the possessory title and Section 53A of the T.P.Act protection to claim as landlord by PW1 against RW1-tenant; and the learned Rent Controller went wrong in dismissal of the eviction petition and the lower appellate Court is right in ordering the eviction from evidence of PWs 1 & 2 proves the RW1 is the tenant under PW1.

**5.** Coming to the contention raised in the grounds of revision of not the conduct of a prudent man for PW1 kept quite for three years if at all there are arrears, though under Section 3 of the Indian Evidence Act, 1872 an adverse inference can be drawn, once there is a clear evidence supra that inference will not sustain to over weigh the evidence on record.

**6.** Having regard to the above, this Civil Revision Petition is to be dismissed. However, as the revision petitioner-tenant is running the provisional shop and claimed difficult to secure alternative accommodation

without reasonable time, time is granted for eviction till the end of June, 2019 subject to condition of the revision petitioner-tenant shall file an affidavit before the learned Rent Controller, within fifteen (15) days from the date of receipt of a copy of this order, undertaking to vacate and handover the premises to PW1 within the time supra and not going to introduce any third-party claims. From 01.07.2018, he has to pay use and occupation charges @ Rs.1,500/- (Rupees one thousand and five hundred only) per month till vacating within the period supra. If there is any non-payment of three consecutive months amounts by the petitioner-tenant, the respondent-landlord is automatically entitled to file Execution Petition to evict the petitioner-tenant and the above protection of continuing till end of June, 2019 is not available in such contingency. So far as the arrears prior to filing of the revision of rent or damages concerned, there is no observation made herein and the remedies of the parties are left open.

Accordingly, this Civil Revision Petition is dismissed. No order as to costs.

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**Dr. B. SIVA SANKARA RAO, J**

27.07.2018

**Note: Issue C.C. by 01.08.2018**

(B/O)  
MVA