

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 2644 OF 2011

ORDER:

This civil revision petition under Section 22 of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short, 'the Act'), is filed by the petitioner-tenant challenging the decree and judgment dated 30-04-2010 in R.C.A.No. 6 of 2008 on the file of the Court of Principal Senior Civil Judge, Guntur (for short, 'the Court below'), whereby the Court below set aside the decree and judgment dated 11-06-2008 in R.C.C.No. 23 of 2004 on the file of the Court of Rent Controller – cum – Principal Junior Civil Judge, Guntur (for short, 'the Rent Controller').

2. The petitioner is the tenant and the respondent is the landlord and they will hereinafter be referred as the petitioner and the respondent for reference of convenience.

3. The respondent filed R.C.C.No. 23 of 2004 on the file of the Rent Controller under Section 10 (2) (i) of the Act to evict the petitioner from the schedule premises on the ground of willful default in payment of rent for the period from 01-06-1986 till the date of filing the petition and the total default is to a tune of Rs.21,000/-. The case of the respondent is that the schedule house portion belongs to Aka Dandayya Pantulu Charities and Aka Rama Rao, who acted as Managing Trustee till his death in the year 1986, is the adopted son of late Dandayya Pantulu; that the petitioner, who is the son-in-law of Aka Rama Rao, was inducted by Aka Rama Rao into the schedule house property accepting his application dated 24-03-1985 on a monthly rent of Rs.100/- and the said Rama Rao also gave a letter to the Trust to the effect that he will stand as surety for the rent and security of the property and also for getting it vacated as

and when necessary and that taking advantage of the relationship, the petitioner did not pay the rent from 01-06-1986 till date and therefore the petitioner is liable to be evicted.

4. The petitioner filed counter affidavit denying material allegations *inter alia* contending that the property originally belongs to Aka Dandayya Pantulu Charities and a hospital was being run in the schedule premises as per the will of the founder; that some unknown strangers used to have access and some illegal activities were going on in the building and when it was reported to Aka Lakshmi Prasanna, who was the Managing Trustee of the trust nominated by her husband Dandayya Pantulu by letter dated 22-10-1985, on the advice of elders, she requested the petitioner to occupy the western side two rooms in the schedule premises to maintain cleanliness and to avoid the acts which were detrimental to the sentiments of the donor and accordingly, the petitioner has been living in the rooms since 1985 and looking after the maintenance of the building; that four months thereafter, Aka Lakshmi Prasanna gave a letter to the petitioner to reside in the schedule premises as a licensee and requested to occupy the building and accordingly, the petitioner occupied the entire premise for its maintenance and protection; that the said Lakshmi Prasanna gave another letter on 01-04-1988 for further continuation of the petitioner as licensee; that after the demise of Rama Rao, one Konduri Venkateswara Rao was elected as the Managing Trustee and thereupon, Aka Lakshmi Prasanna, the wife of Rama Rao, filed O.S.No. 212 of 1987 on the file of Sub Court, Guntur, and obtained temporary injunction restraining the elected trust board from functioning and the trust board also filed O.S.No. 120 of 1989 for asserting the right to manage and administer the trust and ultimately, A.S.Nos. 61 and 62 of 1999 on the file of the Court of District Judge, Guntur, arising out of the above suits were dismissed on 20-12-1999; that

after the above litigation, the petitioner filed O.S.No. 234 of 2002 on the file of the Court of Additional Senior Civil Judge, Guntur (for short, 'ASCJ, Guntur'), on the ground that he was a licensee and entitled to continue in a portion of the property and the same was dismissed on 17-12-2003; that after filing of the suit by the petitioner, the Managing Trustee revoked the license pleaded by him; that as no decree for eviction is passed, the petitioner has been continuing in the premises and he preferred A.S.No. 73 of 2004 on the file of the Court of VIII Additional District Judge, Guntur (for short, 'VIII ADJ, Guntur'), and that the petitioner never acted as a tenant and never paid rent except electricity bills and there was no landlord and tenant relationship between them and therefore prayed for dismissal of the petition.

5. During enquiry, on behalf of the respondent, one Eka Ramayya Pantulu was examined as P.W.1 and got marked Exs.A1 to A12 and on behalf of the petitioner, he himself was examined as R.W.1 and got marked Exs.B1 and B2.

6. Upon hearing argument of both counsel, the Rent Controller dismissed the petition holding that there was no subsisting jural relationship of landlord and tenant between the parties.

7. Aggrieved by the judgment in R.C.C.No. 23 of 2004 dated 11-06-2008 passed by the Rent Controller, the respondent filed R.C.A.No. 6 of 2008 on the file of the Court below. By the impugned judgment, the Court below allowed the appeal setting aside the findings recorded by the Rent Controller and ordered eviction of the petitioner from the schedule premises.

8. Feeling aggrieved, the petitioner filed the present revision under Section 22 of the Act raising a specific ground that in O.S.No. 234 of 2002 on the file of the Court of ASCJ, Guntur, filed by him, when the Court specifically found that

the petitioner was a licensee and the said finding became final, the Court below ought not to have concluded that there was a subsisting relationship of landlord and tenant between the parties and prayed to set aside the eviction order passed by the Court below.

9. During hearing, Sri Posani Venkateswarlu, learned counsel for the petitioner, would contend that the petitioner is a licensee and not a tenant and that unless the finding in the earlier round of litigation in O.S.No. 234 of 2002 and A.S.No. 73 of 2004 is set aside by a competent Court, the finding recorded by the Court below that there is a subsisting relationship of landlord and tenant is erroneous on the face of the record and prayed to set aside the same.

10. None appears for the respondent though notice was served.

11. The basis for claiming relief by the respondent is that the petitioner was inducted as a tenant on monthly rent of Rs.100/- and he committed default in payment of rent amounting to Rs.21,000/- whereas the specific case of the petitioner is that he was a licensee in possession of the schedule premises and not a tenant and that the Rent Controller, having accepted the case of the petitioner, dismissed R.C.C.No. 23 of 2004 but the Court below, based on the stray admission in the cross-examination of the petitioner as R.W.1 before the Rent Controller that there was a relationship of landlord and tenant, concluded that there was subsisting jural relationship of landlord and tenant totally ignoring the finding in O.S.No. 234 of 2002 and A.S.No. 73 of 2004. On close verification of the finding of the Court below, the basis for arriving at such conclusion is that the petitioner in his cross-examination clearly admitted that there was subsisting relationship of tenant and landlord between him and the respondent. In para Nos. 13 and 14 of the judgment, the Court below adverted to Exs.A8 and A9 and concluded that the petitioner paid rent @ Rs.100/- p.m. from 16-04-1985 to

31-07-1985. The Rent Controller disbelieved these receipts in view of the findings recorded in O.S.No. 234 of 2002 of the file of the Court of ASCJ, Guntur.

12. According to Exs.B1 and B2 letters, the said Aka Lakshmi Prasanna inducted the petitioner into possession of the property as a licensee and the petitioner filed O.S.No. 234 of 2002 on the file of the Court of ASCJ, Guntur, for declaration that he was in lawful possession of the schedule premises as a licensee and for permanent injunction which ended in dismissal by decree and judgment dated 17-02-2002. It is also an admitted fact that the petitioner preferred A.S.No. 73 of 2004 on the file of the Court of VIII ADJ, Guntur, and the same was also dismissed, certified copy of decree and judgment in A.S.No. 73 of 2004 were marked as Exs.A6 and A7 and no appeal was preferred thereof. Therefore, the judgment in O.S.No. 234 of 2002 attained finality. The said Aka Lakshmi Prasanna also filed O.S.No. 212 of 1987 on the file of Sub Court, Guntur, against the trust board and obtained temporary injunction and the trust board also filed O.S.No. 120 of 1989 questioning the claim of Lakshmi Prasanna to be the Managing Trustee and both the suits were tried jointly and the Sub Court, Guntur, dismissed the suit filed by Lakshmi Prasanna while decreeing the suit filed by the trust board. Thereafter, she preferred A.S.Nos. 61 and 62 of 1999 on the file of the Court of District Judge, Guntur, and both the appeals were ended in dismissal. However, these suits are irrelevant for deciding the present issue.

13. In O.S.No. 234 of 2002, ASCJ, Guntur, recorded a specific finding in para No. 10 of the judgment that "by virtue of the consecutive judgments, it is revealed that Smt. Lakshmi Prasanna was not the Managing Trustee and her letters authorizing the plaintiff (tenant) to occupy the premises as a tenant or the licensee whatever the case may be proved to be illegal and the same gentleman

filed this suit for declaration of his status as a licensee and permanent injunction against Trust Board members is of no value." When the suit filed by Lakshmi Prasanna, who allegedly inducted the petitioner, was dismissed finding that she was not the Managing Trustee of the respondent, consequential induction of the petitioner either as licensee or tenant is illegal. When O.S.No. 234 of 2002 filed by the petitioner was ended in dismissal and the same was attained finality in A.S.No. 73 of 2004, his possession is only as a tenant in view of Exs.A6 and A7 and the admission made during his cross-examination before the Rent Controller. If this admission coupled with Exs.A6 and A7 is read together, there is subsisting jural relationship of tenant and landlord between the petitioner and the respondent and the letters *i.e.* Exs.B1 and B2 are inconsequential as Aka Lakshmi Prasanna was incompetent to issue them. The admission whatever relied upon by the Court below was based on both oral and documentary evidence and it rightly ordered eviction of the petitioner having found that he committed willful default in payment of rent from 01-06-1986 onwards till the date of filing R.C.C.No. 23 of 2004 before the Rent Controller. Therefore, such fact finding cannot be interfered with by this Court while exercising power under Section 22 of the Act. Section 22 of the Act permits this Court to interfere with the findings of the Court below when it finds that there is an illegality or irregularity or impropriety in the order under challenge but here in this case, there is absolutely no illegality or irregularity or impropriety to interfere with the judgment passed by the Court below in R.C.A.No. 6 of 2008.

14. In view of my foregoing discussion, the revision is devoid of merits and the same is liable to be dismissed.

15. The civil revision petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

Date: 02-03-2018.
JSK

M.SATYANARAYANA MURTHY, J.

