

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.4555 of 2018

ORDER:

This revision is filed by the petitioners/ third parties, aggrieved by the order dated 21.07.2018 in unnumbered E.A.No..of 2018 in E.P.No.80 of 2018 in O.S.No.133 of 2015 passed by the Principal Senior Civil Judge, Nellore, SPSR Nellore District.

2. The revision petitioners 1 and 2 are third parties. The above suit filed was for the relief of recovery of possession with arrears of rent filed by one A.Krishnavenamma, W/ o late Padhakrishna Murthy against one Padavala Audinarayana S/ o Sessaiah. The suit was decreed on 24.06.2017 directing the defendant/tenant to deliver vacant possession to the plaintiff within 9 months from the date of judgment and also to pay arrears of rent Rs.45,000/- upto January, 2015 and future damages for use and occupation from February, 2015 till date of delivery and for costs. The plaint schedule property consists of Shop bearing No.17-1-324, ground floor, opposite Sivapriya Lodge, Trunk Road, Nellore, of an extent of 2 ½ ankanams, bounded by: East-KVR Chantireddy road; West-Sivapriya hot foods; North-Yadlavari Street; and South-Joint wall in between plaintiff and her vendor.

3. The averments of the sole plaintiff in that suit are that she is absolute owner of the plaint schedule shop, that was let out to the defendant on a rent of Rs.4,000/- p.m. from March, 2005; in 2006, rent enhanced to Rs.5,000/- p.m.; in 2008, Rs.5,500/- p.m.; in 2010, Rs.6,000/- p.m.; in 2012, Rs.7,000/- p.m; and from March, 2014, Rs.9,000/- p.m. and the defendant committed default in payment of rents and without prior permission, let out a portion to one Nagaraju for running killi, beedi, cigarettes and mobile recharge shop on daily rent of Rs.200/- and when she questioned the so called sub-lease without permission, with a demand to vacate, he failed to comply and on the contrary, he filed O.S.No.447 of 2014 on the file of the III Additional Junior Civil Judge, Nellore, alleging rent only Rs.5,000/- p.m. by suppressing the actual rent of Rs.9,000/- p.m. and subsequently, she issued a notice Section 106 of the Transfer of Property Act and later, filed the suit from the cause of action.

4. The same contested by the defendant admitting relationship of landlord and tenant, however, the rent claimed is untrue and he mentioned what is actual rent in O.S.No.447 of 2014 filed by him where against possession,

temporary injunction, he claimed as did not commit any default and denied sub-letting.

5. It is, there from, after trial, from the evidence of PW1 with Exs.A1 to A6 from defendant did not choose to contest having been set ex parte decreed the suit for possession.

6. It is, in taking delivery of possession of the property pursuant to the said decree in O.S.No.133 of 2015, the decree holder-A.Krishnavenamma filed E.P.No.80 of 2018 under Order XXI Rule 35 CPC against the judgment debtor-P.Audinarayana.

7. It is, during pendency of the E.P for delivery ordered, with obstruction there is a claim by the present petitioners, who are third parties to O.S.No.133 of 2015, by names A.Rama Mohan Rao, S/o late Padha Krishna Murthy and A.Avinash S/o Rama Mohan Rao, by showing the decree holder and judgment debtor as respondents 1 and 2 with averments in the claim petition under Order XXI Rules 97 and 101 CPC instead of 99 and 101 CPC that the 1st claimant is father of 2nd claimant and the decree holder is mother of the 1st claimant and paternal grandmother of 2nd claimant. The petition schedule property is referred as Hindu Undivided Family, where, the petitioners and their mother and brother are having undivided interest.

Originally, A.Subbramaiah, the paternal grandfather of the 1st petitioner/third party constituted a Joint Hindu Family and acted as Kartha. In the year, 1970, said A.Subbramaiah joined as a tenant in the schedule property and used to run milk depot and he obtained electricity connection in his name and till today, electrical connection was in his name. After his death, his one and only son by name A.Radhakrishna Murthy, father of 1st petitioner continued the milk business and acted as Kartha of the Hindu Undivided Family. At that time, he purchased the petition schedule property, which is the self-same decree schedule property by sale in the name of decreeholder/ 1st respondent, who has no manner, though 1st respondent is a house woman with no income for dependent on her husband and family members, and the father of the 1st petitioner paid entire consideration of Rs.22,000/- out of the income of the joint family, to the vendor P.Venkata Subba Rao vide registered sale deed bearing No.8458 of 1990 and thereby, the 1st respondent/decree holder is a nominee and name rendered for the property belongs to the joint family. The father of the 1st petitioner died intestate on 07.10.2002. Radhra Krishna Murthy, father of 1st petitioner let out the schedule property to 2nd respondent/judgment debtor for running a

coffee business with name 'Sujith Café' and after his death, the petitioners, 1st respondent/decree holder and one A.Balasubrahmanyam, who are the legal heirs and joint owners entered into a family arrangement, as per which, the 1st petitioner is entitled to receive the amounts for ground floor and Bala Subrahmanyam is entitled to receive the rents for the 1st floor. While stood thus, the disputes arose between the legal heirs of Radha Krishna Murthy and 2nd respondent/tenant on the aspect of enhancement of rent. The 2nd respondent filed a suit for bare injunction in O.S.No.417 of 2014 against 1st respondent and later, she filed the suit for eviction against 2nd respondent. It is averred that during pendency of cases, 1st petitioner and 1st respondent held a mediation with 2nd respondent and convinced him to vacate and deliver property by explaining the health status of 2nd petitioner to provide livelihood to him, as he is a heart patient and unable to do any work and consequently,

2nd respondent vacated the property by receiving Rs.20,000/- from 1st petitioner and delivered the same to the 1st petitioner with the consent of 2nd respondent and since then 1st petitioner is running a café business, under the name and style of 'Amma Café' therein to the knowledge of the

1st respondent. The 2nd petitioner filed O.S.No.209 of 2017 for permanent injunction against 1st respondent and Balasubrahmanyam for the self same property, which is pending and 1st petitioner filed O.S.No.215 of 2017 against 1st respondent and another by name Balasubrahmanyam, for partition of E.P. schedule property into three equal shares and to allot 1/3rd share to the 1st petitioner. It is contended that decree in O.S.No.133 of 2015 between 1st respondent and 2nd respondent of alleged landlord and tenant and not otherwise binding on them. It is also averred that the 1st respondent is not absolute owner as she executed a registered gift deed bearing No.742 of 2016 in favour of Balasubrahmanyam and thereby, the claim petition is to be numbered.

8. The learned Principal Senior Civil Judge, Nellore, by the impugned order, dated 21.07.2018, rejected the claim petition from the rival contentions supra with observation that in view of the *lis*, how the present claim is maintainable when its *subjudice* covered by suits in O.S.Nos.215 of 2017 and 209 of 2017, to entertain and the expressions of the Apex Court relied upon by the counsel for the petitioners in Ram Chandra Verma v. Shri Jagat Singh Singhi (AIR 1996 SC 1809) and Ayireddy Lakshmi and Ayireddy Kamarajugadda

Subba Lakshmi v. Pydah Subrahmanyam Jagannadha Satya Prasad (2009(2) ALT 194) are different to the present case and no way applicable.

9. It is impugning the same, present revision is maintained with the contentions in the grounds of revision that the impugned rejection order of the lower Court is unsustainable and baseless and should have seen that a third party was a stranger to the proceedings, who got a legal right need not wait till dispossession and can maintain before dispossession any claim petition and the petition is thereby maintainable and should have been numbered the same instead of rejection.

10. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

11. So far as the claim of the claimants is concerned, what they pleaded is the property originally purchased in the name of the decree holder with joint family funds, as family manager for the benefit of joint family by her husband-Radha Krishna Murthy, his brother-A. Balasubrahmanyam, his son-A. Rama Mohan Rao and his grandson-A. Avinash.

12. So far as the suit in O.S.No.209 of 2017 for permanent injunction maintained by 2nd petitioner, S/o 1st petitioner against 1st respondent concerned, it is still pending. So far as

the suit for partition in O.S.No.215 of 2017 maintained by the 1st petitioner/ A.Ram Mohan Rao against 1st respondent/ A.Krishnavenamma and A.Balasubrahmanyam concerned, that suit is also pending.

13. Admittedly, the tenant for the premises by name, P.Audinarayana(2nd respondent/ judgment debtor) maintained O.S.No.447 of 2014 for permanent injunction and not to evict except through due process of law, against the decree holder herein. It is, subsequently, the decree holder filed the suit in O.S.No.133 of 2015, where the tenant remained ex parte after contest and the decree was passed. What is claimed in the present claim petition is there was settlement between 1st respondent/decree holder and the petitioners with 2nd respondent/tenant/ judgment debtor orally and he delivered possession by receiving Rs.20,000/- from the petitioners to the petitioners. There is no document filed in support of it. So far as the 2nd respondent/ judgment debtor concerned, he cannot deny having filed the suit not to evict during subsistence by tenancy, in O.S.No.447 of 2014, and having suffered the decree for eviction in OSNo.133 of 2015.

14. So far as the petitioners' claim is concerned, but for the alleged oral arrangement not borne by record, there is nothing to say they are in possession of the schedule

property. Once such is the case, the very claim petition is not maintainable and the lower Court is rightly rejected the same.

15. Accordingly, the Civil Revision Petition is dismissed, without prejudice to pursue the pending civil suit litigations and if at all entitled to any decree, in any of the suits, by impleadment of the present decree holder, if not party therein to claim possession.

16. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

Date: .09.2018
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JUSTICE Dr. B.SIVA SANKARA RAO

