

HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

Civil Revision Petition No.3973 of 2017

ORDER

The revision petitioner P.Uday Kumar is the tenant under the respondents-G.Narasimha Rao and G. Gangadhar. The R.C.No.274 of 2009 on the file of IV Addl.Rent Controller at Hyderabad, was filed by the so called landlords for eviction of the revision petitioner herein on the grounds of willful default in payment of rent, accommodation available failed to occupy and for bonafide requirement of the said landlords, besides denial of title.

2. The petition schedule property consists of premises bearing No.3-2-351 situated at Chappal bazaar Kachiguda, Hyderabad, a portion on the north-eastern side consisting of two rooms, a kitchen WC and bathroom with the boundaries described in the eviction petition schedule. The eviction petition, dt. 31.07.2009 filed is with averments that the father of the eviction petitioners by name G.Ramaiah is the absolute owner having purchased from Keki Hirjibhai Dinshaw and 6 others vide registered sale deed No.2450/67 dt.16.08.1967 for an extent of 700sq.yards house with Madras tiled roof and he bequeathed the same while in possession and enjoyment in favour of the petitioner covered by will dated 18.01.2003 which is consisting of two portions and in the lifetime of their father, he leased out western side portion to Sir.Kirti Jivan, Proprietor of Jivan Jyothi Dyeing & Printing works (for short, 'JJDP Works') in 1968 and said tenant later vacated on 26.05.2007 and delivered possession to them and said portion is in dilapidated condition and in their possession only. So far as the other portion covered by north-eastern side consisting of two rooms, kitchen WC

and bathroom, it was leased out by the RC petitioners to the father of the RC respondent by name late Janardhanaiah in 1975 on rent of Rs.75/- p.m. exclusive of water, electricity and MCH taxes and later enhanced to Rs.250/- p.m. which is oral and after death of Janardhanaiah in 2006, the RC respondent/tenant is continuing as a tenant paying rent and suddenly he stopped payment from 2007 January and evading to give proper reply and even threatened them for their approaching him to collect the rents to see the end. Further he secured even alternative accommodation bearing No.3-4-1007, Flat No.CG, MG Naidu Apartment, Barkatpura, Hyderabad and presently residing therein for the last one year and having ceased to occupy the petition schedule premises and even it is required for bonafide self-occupation for RC petitioner's grown up children and RC respondent failed to comply the demands to vacate including by legal notice, dt.05.06.2009, but with false reply, dt.29.06.2009 by denying even landlord-tenant relationship and in claiming himself as owner which made them to file the eviction petition.

3. The counter contest of the RC respondent in denying the petition averments is that he is owner and possessor in enjoyment of the premises bearing No.3-2-351 admeasuring No.740sq.yards which is an old house, bathrooms and a shed bounded by compound wall and gate situated at Chappal Bazar, Hyderabad and it is his father Janardhanaiah @ Janradhan Rao purchased the petition schedule property from its lawful owner Smt. Jana Bhai in the year 1956 and since then they are in peaceful and uninterrupted enjoyment by paying taxes and it is false to say the

RC petitioners' father G.Ramaiah purchased the property from Sri Kirti Jivan, Proprietor of JJDP Works and 6 others by so called registered sale deed, dt.17.08.1967 of 700sq.yards with Madras tiled house. It is also false to allege that said Ramaiah leased out a western side portion to JJDP Works in 1968 or tenant vacated and handed over to them on 26.05.2007 or that portion is in dilapidated condition despite it is in their possession and enjoyment or they leased out petition schedule premises in question to the father of the RC respondent in 1975 on rent of Rs.75/- on enhanced later Rs.250/- or after death of Janardhanaiah, RC respondent is continuing as a tenant under them with same rent and as such same allegations are denied as false and invented for the purpose of petition including as if landlord-tenant relationship, denial of title, willful default and so called bona fide requirement. It is also claimed that the RC respondent got the premises 3-4-1007 is also not true leave about question of any alternative accommodation arises or not of consideration and sought for dismissal of the petition for not entitled to the reliefs. It is further averred that no petition schedule filed with any extent much less with any rough sketch as required. It is also claimed that the RC petitioners filed O.S.No.4662 of 2009 before the III Junior Civil Judge, City Civil Court, Hyderabad for injunction against the RC respondent and there is a declaratory suit filed by RC respondent in O.S.No.657 of 2009 on the file of the II Addl.Chief Judge, City Civil court, Hyderabad and the RC respondent sought for transfer of the injunction suit to club with that declaratory suit. All the other allegations claimed as false including the notice contents by issuing reply with correct allegations and in November,

2008 G.Narasimha Rao-RC 1st petitioner and others along with police, Kachiguda tried to forcibly dispossess, for which he reported to the Commissioner of Police, dt. 13.11.2008 and it is subsequently a legal notice issued by the RC petitioners with false allegations.

4. From the above pleadings in the course of enquiry before the Rent Controller, RC 1st petitioner-Narasimha Rao filed chief affidavit and placed reliance on 13 documents viz: office copy of legal notice, dt.05.06.2009, office copy of reply notice, dt.29.06.2009, GHMC assessment notice, dt.29.12.2008, original will deed executed by late Gourisetty Ramaiah, dt.18.01.2003, original sale deed, dt.10.08.1967, office copy of police complaint, dt.10.10.2009, rental agreement dt.25.01.68, and letters to the JJDP works of June and July, 1972, and letter of delivery of possession by them dt. 26.05.2007, letter of receipt of possession, dt.26.05.2007, certified copy of order in I.A.No.1768 of 2009 granting ad-interim injunction in O.S.No.4662 of 2009, dt.18.02.2010 and Encumbrance Certificate of property from 1967 to 2010. In the chief examination averred that subsequent to filing of R.C.No.274 of 2009 and served of summons, the RC petitioners also filed O.S.No.4662 of 2009 for injunction and obtained interim injunction for which the RC respondent with malafide intention filed declaratory injunction suit O.S.No.657 of 2009 with distorted version and obtained exparte status quo order in I.A.No.3440 of 2009, dt.19.11.2009 and I.A.No.3441 of 2009 against alienation of the property on even date from interfering with the possession, and those are pending.

5. In the cross-examination of RC 1st petitioner-P.W.1 by the respondent recorded through Commissioner he stated that though he studied upto 10th class, he cannot read and write English. He has one brother(RC-2nd petitioner-G.Gangadhar) and five sisters of whom Laxminarasamma, Sarojini, Annapurna, Andalu and Meena and all are alive and Laxminarasamma is the eldest one and aged about 70 years resident of Ismania Bazar who is hale and healthy and all of them are residing at Hyderabad and in cordial relations. For the question posed to him as to whether he knows the contents of his chief affidavit, he stated that his counsel only can know though the chief affidavit was prepared on his instructions. He deposed that he is doing silver and gold articles business with name and style "Gowrisetty Ramayya jewelers" situated at Sultan Bazar, with his brother(RC 2nd petitioner) and they are carrying on business for the last 60 to 70 years with just a small shop and with assistance of their children whenever required for the same is joint family business with no other business for them and that the license of the business is still in the name of their late father who passed away in 2006. Ex.P.11 letter of receipt of possession supra shows taking of possession from another tenant from adjacent premises and it bears his signature and the witnesses to it are Suresh Chandra and Nalin Shah. He stated that at the time of scribing the will-Ex.P.4, he was present however again says he was not present including at the time of purchasing the same and he does not know from whom the stamp paper purchased however on verification of the same shows stamp paper was purchased by him. He says witnesses to the said will are self-same person Suresh Chandra

and the other is P.Mallesha who are alive. He further stated that he has no document to show that father of the RC respondent (so called tenant) was paying rents to their father (so called landlord) so also to show any relationship of landlord and tenant between them. He stated that his father's friend's son-Dharampuri used to collect rents from respondent's father and his son B.D.Suresh Chandra. He deposed that his father for the first time mutated his name in the municipal records under Ex.P.3(on 29.12.2008) and his father in fact died on 31.05.2006 and later the P.W.1 was passing receipts on white papers to the respondents after death of his father till December, 2006, but said fact is not mentioned in Ex.P.1 notice by him. For his version of used to pass receipts by noting in a book that was with RC-respondent concerned, admittedly he did not whisper the same in his eviction petition averments even he denied the suggestion of no jural relationship between them. Ex.P.7 relied refers to another premises allegedly let out to JJDP works which is with no signatures of tenant and Landlord and the recitals show so called tenant executed in the name of his father in denying the suggestion of it is created and there is no any such tenancy even for that he stated that the signature on Ex.P.8 is different from signature on Ex.P.7 allegedly signed by same tenant so also in Ex.P.9 which are not similar and in saying Exs.P.7 to P.9 were handed over to him in the year 1958 by his tenants (In fact, those are for the years 1968 to 1972). He deposed that in Ex.P.10 there is no signature of his brother and he cannot say whether Exs.P.7 and P.10 are not signed by one person though denied those were not the signatures of the alleged tenant of JJDP works and brought into

existence including Ex.P.11. Though he deposed that there are documents to show that himself and his father used to reside in the petition schedule premises prior to 1975 and he cannot produce the same and denied the suggestion of RC-respondent's father since 1956 residing in the schedule property on own right and never resided as a tenant under them or their father and there is no jural relationship of landlord and tenant between them. He deposed that they are residing in House No.4-9-948/ 949 of Isamia Bazar which is a single storied building and his mother given the same to grandchildren i.e. his brothers children but he says he cannot file any document for such say and denied the suggestion of the alleged bona fide requirement of personal occupation is also false for where they are residing is with more than sufficient space. He deposed about the exchange of complaints from both are one against the other between them in November, 2008. However documents placed by P.W.1 in I.A.No.76 of 2011 are telephone bill, dt.09.09.2002, electricity bill, dt. 08.02.2006, photostat copy of paper publication dt.25.07.1967 and receipt issued by the State Central Library, dt.11.04.2011. In this regard in the further cross-examination, he deposed that from perusal of the encumbrance certificate marked as Ex.R.1 confronted to him, it is showing as suggested of sold the petition schedule property to one M.Padmavathy vide registered document No.3336 of 1978, however saying he is not in a position to identify the document shown to him whether it belongs to the petition schedule property or not which is the Encumbrance certificate obtained from e-seva. He deposed that the respondent got another brother and sister being children of late

Janardhanaiah who studied in new progress high school. He does not know whether school records of the sons of Janardhanaiah show address of the petition schedule property even in the years 1959-61 and denied the suggestion of neither they nor their father are owners and neither respondent nor respondent's father was tenant and denied the suggestion of he managed to obtain Ex.P.13 falsely. Ex.P.16 is Deccan Chronicle Newspaper, dt. 25.06.1977 with no certification and he obtained the same from State Central Library with reference to Ex.P.17 with no stamp thereof even saying he cause examine the Librarian to prove it if requires. He denied the suggestion of his father executed sale deed in favour of Padmavathi bearing No.3336/1978 in respect of house No.3-2-351 of 800sq.yards at Outbiguda, Kachiguda, Chappal Bazar, Hyderabad but no steps taken by him to cancel the same. He denied the suggestion of RC respondent or his father never paid any rents and they are not the tenants. P.W.2 is Suresh Chandra deposed that father of the P.W.1 and his father Dharampuri, are friends for the last 60 years and closely associated. He deposed that father of the petitioners leased out the property-the north-eastern portion to the father of the RC respondent in 1975 orally and he used to collect rents from said Janardhanaiah by entering in the book kept by him. Said Suresh Chandra in his cross-examination deposed that he is visiting office of the counsel of the petitioners for the last 6 years though he has no personal causes at that office and the petition schedule property is at a distance of 1 km to his house and he has not seen any document pertaining to tenancy between the father of the petitioners and

respondent and there are no documents to show collection of rents from father of the RC respondent to say he used to enter in the pocket diary and pocket diary used by the Janardhanaiah-father of the respondent is denied as not true. He deposed that there is no documentary proof much less any rent at Rs.75/- p.m. paid and denied the suggestion of Janardhanaiah and his son respondent never tenants and he never collected any rents much less on behalf of the petitioners or their father. He deposed that the so called will was scribed in January,2003 after Sankranti festival and denied the suggestion of Ramaiah was not having any ownership of the property and much less bequeathed to the petitioners.

6. On behalf of the RC respondent, he himself came to the witness box from his chief examination affidavit filed reiterated his version and denying the version of the petitioner and in his cross-examination, he deposed that Ex.R.3 admission form in the name of P.Usharani-daughter of Janardhanaiah issued by New Progress High School, Ex.P.4 admission form of Umesh Kumar, S/o Janardhanaiah is also issued by Progressive Montessory Kindergarten School, Kachiguda, Hyderabad, Ex.R.5 certified copy of sale deed,dt.23.08.1978 executed by G.Ramaiah in favour of Smt. N.Padmavathi, dt. 23.08.1978. Ex.R.8 partition deed, dt. 13.04.2011 executed between the legal heirs of Padmavathy with cheque leaves issued by the Government of A.P. Ex.R.7 legal heir certificate issued by Mandal Revenue Officer, dt.13.07.2006 showing the legal heirs of Janardhanaiah and Ex.R.8 is the electricity consumption charges demand bill for the month of March,1972 regarding petition schedule property, dt. 05.12.1972 and

Ex.R.9-electricity consumption bills for the petition schedule property with account No.H2-149, Ex.R.10 electricity charges receipt with the same account number for the petition schedule property dated 04.08.21972. Ex.R.11 another electricity demand notice dt.10.11.1972 with account No.H2-149, Ex.R.12 another electricity bill with signature of respondent's mother in the name of respondent's father dt.21.09.1973 for the petition schedule property and Ex.R.14 electricity demand notice containing signature of father of respondent Janardhanaiah dt.21.12.1973, Ex. R.15 electricity charges demand notice containing signature of father of respondent dated 26.10.1973. Ex.R.16 electricity charges demand notice in the name of mother of respondent dt. 21.11.1973, Ex.R.17 electricity charges receipt, dated 18.06.1972, Ex.R.18-electricity charges demand notice containing the signature of his father,dt.24.04.1974, Ex.R.19-electricity charges demand notice containing the signature of his mother, dt.22.04.74, Ex.R.20-electricity charges receipt, dt.03.01.1974, Exs.R.21 and 22-electricity charges demand notice containing signature of his mother, dt.21.01.1974. In the cross-examination of R.W.1, he deposed that he got diploma in cinema autography and journalist by profession being a Free Lancer for the last 20 years worked in different concerns and 20 years back worked in Dooradarshan even. He deposed that till 20 days prior to the receiving of the suit summons he was residing in the petition schedule premises at Chappal Bazar bearing No.3-2-251 however he renovated the said house and shifted to apartment at Barkapur prior to 05.06.2009 and residing there at M.G.Naidu apartment. The reply notice (Ex.P.2), he did not mention particulars

regarding the purchase of the property by his father and he did not file any document under which his father purchased schedule property from Jana bai. Witness adds that that document is missing which is of the year 1956 and could not file any police report regarding the missing of said document and his father died on 10.05.2007 and prior to that he saw the document once however missing and untraced later and in the counter he did not mention about the missing of the document so also in the plaint in O.S.No.657 of 2009 or in the chief affidavit in that suit covered by Ex.P.11 certified copy of chief examination affidavit taken on oath under Ex.P.19 in that suit covered by Ex.P.20 cross-examination in continuation of it. He denied the so called Ex.P.7 alleged lease deed letting out the other portion by the RC petitioners or their father to JJDP works so also the alleged correspondence under Ex.P.8 and 9 or the so called delivery of possession and acknowledgment of receipts Exs.P.10 and P.11. He deposed that the electricity bills and water bills which are in the name of Jana bai who is the vendor of his father for the plaint schedule property and thereby residing as owners and not as tenants much less under petitioners or their father. It is in the further cross-examination, he stated that he filed 111 documents before the II Addl.Chief Judge, City Civil Court in O.S.No.657 of 2009 and except Exs.R.1 to R.7, he did not file any document in this Court including municipal tax receipts paid by his father. Exs.P.22 to Ex.P.44 are house tax receipts of petition schedule property which is paid by his father and after death of his father of he paid the property tax and

Ex.P.45 is the receipt in provisional for the house tax assessment which is paid through Keethi Jeevan.

7. From the evidence supra, the learned Rent Controller in his order dt.19.11.2015 allowed the petition by directing to vacate within three months the schedule property with observations that the petitioners are deriving title by virtue of Ex.P.4 will dated 18.01.2003 and P.W.2 is attestor who deposed the presence at the time of the will executed by G.Ramaiah in favour of P.W.1 and the petition schedule property is divided into three equal shares between the petitioners and there is one link document regarding to the property covered by Ex.P.5-copy of registered sale deed executed by G.Ramaiah-father of the petitioners and supported the evidence of R.W.1 in claiming title of the property on the basis of water bills, electricity bills, Municipal tax, and claimed that after purchase of the property from Jana Bai in 1956 but he did not produce the document and R.W.1-respondent filed civil suit for declaration of title in O.S.No.657 of 2009 before the II Additional Chief Judge, City Civil Court, Hyderabad basing on the property tax receipts and electricity bills and by claiming adverse possession. On perusal of the Ex.R.1 encumbrance Certificate shows G.Ramaiah representing by his SPA Sri M.Narasimha Rao sold petition schedule property to Padmavathy under Sale deed 1978 (Ex.R.5), whereas Ex.R.4 is dated 18.01.2003 and Ex.R.6 partition between husband of Padmavathy and his two sons after death of Padmavathy vide deed, dt. 13.04.2011. For Ex.P.1, the Ex.P.2 reply of respondent shows only denial of title and claiming title in himself however even from the documents, there is no title flown

to the RC respondent to claim title in himself and to deny the title of petitioners. Thereby the denial of title is not bonafide, leave about RC respondent could not get declaration of title based on adverse possession. It is further observed that merely because of Ex.R.8 to 22 electricity and municipal tax receipts in the name of respondents, it cannot be inferred of RC respondent is not a tenant. Exs.P.4 and P.5 shows oral tenancy between the petitioners and respondents which evidence of P.W.1 is corroborated with the evidence of P.W.2. It is also observed that there is a Flat No.CG, MG Naidu Apartment, Barkatpura, Hyderabad secured by respondents and failed to vacate and P.W.1 was not even cross-examined in this regard by RC respondent and thereby liable for eviction.

8. When the appeal maintained impugning the correctness of the eviction order passed by the Rent controller, the appellate Court in R.A.No.229 of 2015, dt.19.06.2017 confirmed the order of Rent Controller with the observations that Ex.R.5 alleged sale deed was executed by father of the eviction petitioners represented by the G.P.A. The eviction petition respondent who is the appellant before the lower Court and petitioner herein, as observed before the lower Court, did not examine anybody. As per the eviction petitioners, the petition schedule property purchased by their father from one Janabai in 1956. They also did not examine any person in proof of it including in relation to the right to execute therefrom the Ex.P.4 will or R.5 sale deed. However, the P.W.1's evidence is supported and corroborated by P.W.2 as observed by the tribunal of existed by oral

landlord and tenant relationship and rents collected by the eviction petitioners and thereby there is nothing to interfere.

9. Coming to the main contentions in the grounds of revision, vis-à-vis the oral submissions of the learned counsel for the revision petitioner-RC respondent that Courts below did not consider the facts that the revision petitioner is claiming ownership and filed a suit for declaration in O.S.No.657 of 2009 which is pending, the lower Court should have considered the crucial fact that the father of the RC petitioners already sold the property to one Padmavathy under Ex.R.5 sale deed No.3336 of 1978 and lost their right therefrom over the property and thereby not entitled to seek for eviction and Courts below failed to consider the factum of father of revision petitioner/ RC respondent was continuing in possession since 1956 with his own right and Ex.R.3 and R.4 also mentions the address of the petition schedule property from the School records of the revision petitioner's sister and brother during 1965 to say that the revision petitioner and his father were not tenants under the RC petitioner as contended by him of no even any jural relationship and once that could not be established, the Rent Controller has no jurisdiction to decide the issue and Courts below committed grave error to infer landlord and tenant relationship without basis and in ignoring the crucial facts supra including in the documentary evidence for nothing shown by the eviction petitioners of existence of jural relationship and ownership over the property still after Ex.R.5 in favour of Padmavathy much less any payments of rent and thereby none of the grounds made out to pass order of eviction and the concurrent

findings are devoid of merits, thereby set aside by allowing the revision.

10. The learned counsel for the respondents to the eviction petition supported the orders of the Courts below. In the factual background covered by the respective contentions, now coming to the crucial aspects in the revision as to there existence of any landlord and tenant relationship and the concurrent findings of the Courts below in ordering eviction holding landlord and tenant relationship existing by issuing proceedings is devoid of merits to set aside;

11. The fact that Ex.R.5 sale deed of 1978 said to have been executed by father of the RC petitioners in favour of one Padmavathy itself shows the original ownership lies with father of the RC petitioners. From this, coming to the contention of the RC respondent/ Revision petitioner of since his vendors time continuing in the property from 1956 concerned, it is not even a case of pursuant to Ex.R.5 sale deed any amount of rents paid to said Padmavathy and Padmavathy assumed possession. It is not even the counter contest much less reply stating that the title of Padmavathy acquired over the property from the father of the RC petitioners but for saying in claiming of own right. No doubt, a civil Court is entitled to go into the respective contentions, leave about the entitlement to a positive declaratory relief on the claim of adverse possession or any other relief entitled against the RC petitioners that is entirely different from the scope of the Rent Control Case and once there is no stay by the civil suit to proceed with the rent control matter covered by the present revision or during the pendency of the eviction petition or

appeal, there is nothing to support the proceedings much less to prevent from going into the merits to the extent possible but for to say none of the observations even shall influence the mind of the trial Court in deciding suit in O.S.No.657 of 2009 inter se between the parties as a civil Court remedy is efficacious subject to entitlement of relief or not on own merits.

12. By keeping the above facts in view, once the RC respondent document also shows the RC respondent and family members are staying in the property and once the sale deed covered by Ex.R.5 in the name of Padmavathy executed by the father of the eviction petitioners not acted upon nor it is the case of the RC respondent to claim possession and enjoyment through Padmavathy in claiming continuous possession since 1956 and what Padmavathy if at all under Ex.R.5 purchased from the father of the eviction petitioners is for the property covered by the eviction petition schedule and once that is not the case of atornment of tenancy, in the factual matrix supra, with reference to law, it clearly shows subsistence of tenancy between father of the RC petitioners and father of the RC respondent from continuing in possession not under own right and even subsequently any property or part of it sold to Padmavathy under Ex.R.5 in 1978 when it shows not acted upon, the denial of title of the RC petitioners to the eviction petition by the RC respondent thereby is not a bonafide one and as such on that ground itself the eviction ordered with concurrent findings by the Courts below for the reason in the absence of showing with what entitlement the RC respondent and his father continued, the only inference from the material is as

tenant to say subsistence of landlord and tenant relationship and that too on the factual scenario. Once it so held, there is nothing to interfere even taken for arguments sake, the proof of will as contemplated by Section 63 of the Indian Evidence Act not made by the Eviction petitioners. Even otherwise even under intestate succession, they are entitled and apart from it, the Ex.R.5 not shown acted upon. There is nothing for the Court more particularly by drawing from the circumstantial evidence on existence of landlord and tenant relationship with jural relationship of the rent control and application of estoppel in denying title by the RC respondent even by placing reliance on Ex.R.5. In the absence of atonement for not even a case of paying rents to that Padmavathy or family members of Padmavathy much less any claim by Padmavathy or family members of Padmavathy, apart from any remedy if at all is left open to seek the relief of adverse possession subject to entitlement even against said Padmavathy and family members of Padmavathy.

13. With these observations, from the existence of the landlord and tenant relationship conclusion arrived as discussed supra and from denial of title and from estoppel against denial, there is nothing to interfere with the eviction order passed by the Rent Controller and confirmed by the lower appellate Court.

14. Accordingly, the revision is dismissed by confirming the order of the Courts below, however to secure accommodation by the tenant 10 months time is granted to vacate, failing which after 31.01.2019 by virtue of this order, the Landlord is entitled to execute the same to cause evict the tenant for the tenant not entitled to any

further time at any cost and it is made clear that in the meantime, the RC respondent (revision petitioner) has to pay use and occupation charges of Rs.2,000/- per month from 01.01.2018 onwards.

Consequently, miscellaneous petitions, if any, pending in this revision, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:05.03.2018

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