

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.5925 of 2017

ORDER:

The present Civil Revision Petition came to be filed under Article 227 of the Constitution of India, assailing the order dated 14.09.2017, passed in I.A.No.880 of 2017 in O.S.No.50 of 2010 on the file of the Principal Junior Civil Judge, Peddapuram, wherein the application filed under Section 10 of C.P.C. seeking stay of all further proceedings in the suit till the disposal of ATC 41 of 2000 on the file of the Court of Special Officer for Tenancy cases-cum-Prl.Junior Civil Judge, Peddapuram, was rejected.

2. The petitioners filed a suit to declare that the decree in O.S.No.119 of 2002 is void, collusive and fraudulent and not binding on the plaintiffs and to direct the defendants to pay the amount claimed by the petitioners in the plaint with interest. The defence of defendant Nos.1 and 2 is that they are tenants of the property involved in the suit and they filed ATC No.41 of 2000 for declaration of their tenancy rights and that the present issue is subjudice in view of O.S.No.7 of 2002, on the file of the Court of Addl.District Judge, Rajamahendravaram, filed by the plaintiffs for declaration of title. It is stated that the decree and order in ATC No.41 of 2000 will have a bearing on the suit wherein the tenancy claimed by defendant Nos.1 and 2 is directly and substantially in issue. Hence prays that the

proceedings in the suit be stayed till disposal of ATC No.41 of 2000.

3. A counter came to be filed by respondent Nos.1 and 2 disputing the allegations made in the affidavit filed in support of the I.A. It is stated that the averments in the affidavit that the result in ATC will have a bearing on the suit is incorrect and improper. According to him, the suit relates to the revenue deposit of Tahsildar, Peddapuram regarding the attached property in MC No.7 of 2005 and the present ATC is for declaration of the rights.

4. As seen from the averments in the petition, O.S.No.7 of 2002 was disposed of on 03.08.2015. The said suit was filed for declaration of title. A perusal of the averments in the affidavit would show that respondent Nos.1 and 2 herein filed ATC No.41 of 2000 for declaration of tenancy rights in the schedule property which has come up for arguments. The respondents also got initiated the proceedings under Section 145 of Cr.P.C. vide MC No.7 of 2005 and got attached the property in spite of pendency of civil matter between the parties.

5. One of the main argument which was advanced before the Court was that Section 10 CPC is referable to suit instituted in the Civil Court only and the proceedings before the Rent Controller cannot be equated with the proceedings before the Civil Court.

6. In *Manta Subaramayya and others Vs. Batchu Narasimha Swamy and another*¹, this Court held as under:

“10. On a plain reading of the Section, it is manifest that Section 10 is attracted only when the previously instituted proceedings and the subsequently instituted proceedings are suits. If one is suit and the other is not, Section 10 CPC is not attracted.

12. Moreover for the application of Section 10 CPC both the Courts in which the suits are pending, must be of concurrent jurisdiction. That is to say, the Court in which the previously instituted suit is pending must have jurisdiction to grant the relief claimed in the subsequent suit. The Rent Controller in this case does not possess the jurisdiction to pass a partition decree or to order separate possession in the original suit. Unless the suits are pending in Court of concurrent jurisdiction, Section 10 CPC is not attracted.

14. No doubt, apart from Section 10 stay of suit can be granted under inherent powers exercisable by a court under Section 151 CPC. As already stated above, the Rent Controller is not a court. He can exercise inherent powers only, which are necessary for ordering eviction of the tenants, or for determination of those issues, which are necessary for ordering eviction of tenants.

Inherent powers cannot be invoked in a case where a particular procedure has been laid down to meet a particular contingency. Under Section 10 (6) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, if the tenants deny the title of the landlord, or claim permanent tenancy, then the Rent Controller has to determine the bona fides of that plea raised by the tenants. If he is of the opinion that the denial of landlord's title by the tenants is bona fide, then he shall dismiss the eviction petition filed by the landlord. If on the other hand he is not satisfied about the bona fides of the denial of title raised by the tenants, then he shall order the tenants to put the landlord in possession of the building. When

¹ AIR 1972 AP 186

a particular procedure is laid down in the Rent Control Act itself in case of denial of title provisions of Civil P. C. i. e. Section 10 or 151, Civil P. C. are not applicable. The provisions of section 10 (6) of the Rent control Act are also mandatory. The Rent Controller has no option to proceed in any other manner except in the manner stated in Section 10 (6) in case of denial of landlord's title by tenants".

7. A reading of the above judgment makes it clear that for an application under Section 10 CPC, both the Courts in which the suits are pending must be of concurrent jurisdiction meaning thereby that the Court in which the previously instituted suit is pending must have jurisdiction to grant relief claimed in the subsequent suit. It has been held that the Rent Controller does not possess the jurisdiction to pass a partition decree or to order separate possession in the original suit. It is further held that unless suits are pending in the Court of concurrent jurisdiction, Section 10 CPC will not get attracted.

8. In identical circumstance, this Court in *Yerra Seshagiri Rao Vs. Dunna Renukadevi*², while dealing with the issue therein, held that the proceedings before the rent controller are summary in nature which are intended to dispose of expeditiously, whereas, proceedings in the suit may take long time for disposal and it would be unjust to stop rent control proceedings till the disposal of the partition suit.

9. Having regard to the two judgments referred to above and taking into consideration the facts in issue, I am of the view that the order under challenge warrants no interference.

² 2017 (6) ALT 562

10. Accordingly, the CRP is dismissed. Since the ATC case is of the year 2000, the trial Court shall dispose of the matter, in accordance with law, as early as possible, preferably within a period of three to four months.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed. There shall be no order as to costs.

C. PRAVEEN KUMAR, J

25.01.2018

Issue CC by next week.

B/o.

vhb

