

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.498 of 2019

ORDER :

This Revision Petition is filed under Section 22 of the A.P. Buildings (Rent, Lease and Eviction Control) Act, 1960 (for short 'the Act') challenging the order dt.22-01-2019 in R.C.A.No.62 of 2017 of the Additional Chief Judge, City Small Causes Court, Hyderabad, reversing the order dt.28-02-2017 in R.C.No.67 of 2012 of the Principal Rent Controller, City Small Causes Court, Secunderabad, remanding the matter back to the Rent controller to fix the fair rent.

2. The said R.C.No.67 of 2012 was filed by respondent Nos.1 and 2 against petitioner Nos.1 and 2 and respondent Nos.3 and 4 under Section 4 of the Act for fixation of fair rent.

3. Respondent Nos.1 and 2 contended that they purchased the suit schedule property; that petitioner Nos.1 and 2 and respondent Nos.3 and 4 are tenants of the R.C. schedule property on a monthly rent of Rs.1500/- exclusive of electricity charges; that the said property is located in a prime commercial locality in Monda Market; that its rental value had increased manifold and it would fetch a rent of at least Rs.100/- per sft. per month; and therefore, the Rent Controller should fix appropriate fair rent for the R.C. schedule property in occupation of the petitioner Nos.1 and 2 and respondent Nos.3 and 4.

4. It is the contention of the 1st petitioner that though he is a tenant, respondent Nos.1 and 2 are not the landlords. It is his contention that his father obtained schedule property in 1950 from Mohd. Osman, father of Smt. Ishmath Fatima; that the father of the 1st petitioner passed away in 1970 and thereafter, 1st petitioner is continuing the business. He contended that Mohd. Osman has transferred the leasehold rights in favour of his daughter Smt. Ishmath Fatima in 1986 and he was paying rents regularly every month to her. He contended that Smt. Ishmath Fatima offered to sell the R.C. schedule property to him and he agreed to purchase the same and they had entered into agreement of sale dated 04-02-1999 for Rs.11.00 lakhs, of which, he paid an advance of Rs.50,000/-. He contended that under wrongful advice of earlier Advocate, he had filed an application for deposit of rents being R.C.No.51 of 2008 against respondent Nos.1 and 2 and that it was allowed *ex parate*. He contends that respondent Nos.1 and 2 filed R.C.No.199 of 2009 against him for eviction but it was dismissed. He also stated that he filed suit for specific performance against Smt.Ishmath Fatima and also against the respondent Nos.1 and 2 who are subsequent purchasers from her.

5. The 2nd petitioner filed a counter stating that he is in possession of the suit schedule property in part performance of the agreement of sale dt.04-02-1999 and his possession is protected under Section 53-A of the Transfer of Property Act.

6. Before the Rent Controller, respondent Nos.1 and 2 examined R.Ws.1 to 3 and marked Exs.P-1 and P-2 and Exs.X-1 to X-18. Petitioners and respondent Nos.3 and 4 are examined as R.Ws.1 to 4 and marked Exs.R-1 to R-9.

7. By order dt.28-02-2017, the Principal Rent Controller, Secunderabad, dismissed the said application stating that jural relationship of landlord and tenant between respondent Nos.1 and 2 and petitioners and respondent Nos.3 and 4, is not proved. It observed that a civil suit was pending for specific performance of agreement of sale dt.04-02-1999 between the 1st petitioner and his landlady Smt. Ishmath Fatima. It observed that there is title dispute and that the Rent Control Court has no jurisdiction to decide the same.

8. Challenging the order dt.28-02-2017 in R.C.No.67 of 2012 of the Principal Rent Controller, Secunderabad, respondent Nos.1 and 2 filed R.C.A.No.62 of 2017 before the Chief Judge, City Small Causes Court, Hyderabad

9. The said appeal was allowed on 22-01-2019 and the matter was remitted back to the Rent Controller to decide the fair rent to be fixed.

10. The appellate authority under the Act held that the filing of R.C.No.51 of 2008 by the 1st petitioner before the Rent Controller, Secunderabad (which was allowed on 19-06-2009 (Ex.P-1)), is sufficient to infer jural relationship of landlord and tenant between the respondent Nos.1 and 2 and petitioners because 1st petitioner had filed

the same seeking permission to deposit monthly rent of Rs.1500/-. It also took note of the fact that both in the counter affidavit as well as in his evidence as R.W.1, 1st petitioner stated that respondent Nos.1 and 2 are the subsequent purchasers of the R.C. schedule property.

11. It further recorded the admission of 2nd petitioner as R.W.1 in his cross-examination dt.25-09-2013 that he is still continuing to deposit monthly rents to the credit of R.C.No.51 of 2008. It also noted the petitioner's admission as R.W.1 that Ex.P-3 is the relevant portion of his evidence as R.W.1 in R.C.No.199 of 2009, according to which he admitted that respondent Nos.1 and 2 are his landlords. It then took note of the evidence of P.W.1 i.e. respondent Nos.1 and 2 that they purchased the property in 2003 for Rs.11 lakhs from Ismath Fatima, and held that because respondent Nos.1 and 2 did not file registered sale deed copy and because they did not let out the R.C. schedule property to the 1st petitioner, it cannot be said that there is no jural relationship between them of landlord and tenant. It also opined that since 1st petitioner is only relying on agreement of sale, for the specific performance of which suit is filed and is pending, he cannot claim to be the owner or landlord in respect of the schedule property, and so the Rent Controller is not correct in holding that there is a serious title dispute when respondent Nos.1 and 2 purchased the property under a registered sale deed and then issued an attornment of tenancy letter Ex.R-1. It thus reversed the finding of the Rent Controller that there is no evidence of jural relationship of landlord

and tenant between respondent Nos.1 and 2 and 1st petitioner. It then set aside the order of the Rent Controller and remanded the matter back to the Rent Controller to determine the fair rent within two months.

12. Assailing the same, this Revision is filed by petitioner.

13. Learned counsel for petitioner contended that when O.S.No.190 of 2017 filed by them against respondent Nos.1 and 2 and Smt.Ismath Fatima for specific performance of agreement of sale dt.04-02-1999 is pending before the Civil Court, there exists a title dispute and the Rent Controller was correct in refusing to entertain the petition for fixation of fair rent.

14. He does not dispute that title to property does not pass under an agreement for sale. When there is no decree in the suit for specific performance filed by 1st petitioner against Ismath Fatima and respondent Nos.1 and 2, there cannot be said to be transfer of title *prima facie* in favour of 1st petitioner or that there is any serious title dispute between the parties.

15. When 1st petitioner himself filed R.C.No.51 of 2008 seeking permission to deposit monthly rent @ Rs.1500/-, and admitted that respondent Nos.1 and 2 are his landlords in Ex.P-3 (which is the evidence of R.W.1 in R.C.No.199 of 2009), it is not open to the 1st petitioner to now dispute his status as tenant of respondent Nos.1 and 2.

16. It is not in dispute that there is a registered sale deed executed in 2006 in favour of respondent Nos.1 and 2 by Smt.Ismath Fatima and Ex.R-1 notice of attornment of tenancy was issued by respondent Nos.1 and 2 to the 1st petitioner on 05-06-2007. The attornment of tenancy being automatic on the transfer of title to respondent Nos.1 and 2, the 1st petitioner cannot contend that there is no jural relationship between himself and respondent Nos.1 and 2.

17. In this view of the matter, the denial of title of respondent Nos.1 and 2 by petitioners and respondent Nos.3 and 4 is clearly not *bona fide*. Therefore, the Court below did not commit any error of jurisdiction or error of fact or law in passing the impugned order dt.22-01-2019 in R.C.A.No.62 of 2017.

18. The Civil Revision Petition fails and is accordingly dismissed. No costs.

19. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 26-07-2019

Kvr/Vsv