

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.509 of 2019

ORDER :

This Civil Revision Petition is filed under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (**for short, the 'Act'**) challenging the order dt.04.01.2019 passed in Rent Control Appeal No.54 of 2017 of the Additional Chief Judge, City Small Causes Court, Hyderabad, confirming the order dt.07.01.2017 passed R.C.No.192 of 2013 of the III Additional Rent Controller, City Small Causes Court, Hyderabad.

2. The respondents herein filed R.C.No.192 of 2013 before the III Additional Rent Controller, City Small Causes Court, Hyderabad for eviction of petitioner herein alleging that they are owners of the R.C. Schedule property; that petitioner is a tenant of a portion of the R.C. Schedule property on a rent of Rs.1000/- p.m. exclusive of water and electricity charges, payable on or before 5th of every month; that the vendor of respondents informed the petitioner about the attornment of tenancy vide Letter of Attornment dt.01.03.2013 asking the petitioner to pay rents to respondents from 01.03.2013 which was received by petitioner; and that the petitioner failed to pay rents from 01.03.2013 to June, 2013. It is also contended that the respondents required the R.C. Schedule premises for their *bona fide* occupation.

3. The petitioner filed his counter-affidavit opposing the grant of relief to respondents. He contended that the respondents had suppressed the fact that petitioner had purchased the R.C. Schedule premises and he had filed O.S.No.308 of 2013 before the X Additional Chief Judge, City Civil Court, Hyderabad, which is pending for disposal. He denied that the respondents purchased the R.C. Schedule property under the registered sale deed dt.01.03.2013, and contended that the said sale deed was fabricated. He also stated that he paid advance of Rs.1 lakh to the original owner, viz., Krishna Rao Mulajkar. He also contended that since he did not pay total consideration, he is paying rent of Rs.1,000/- p.m. and that he had deposited the rents up to November, 2013 in the Bank account of Krishna Rao Mulajkar.

4. Before the Rent Controller, the respondents examined P.W.1, and marked Exs.P.1 to P.18. The petitioner examined himself as R.W.1 and did not mark any documents.

5. By order dt.07.01.2017, the Rent Controller allowed R.C.No.192 of 2013.

6. The Rent Controller held that ownership of immoveable property worth more than Rs.100/- can only be transferred through registered document but the petitioner does not have any registered document in his favour to prove his ownership over the R.C. schedule property and he also did not have any decree for declaration of his

title over the properties, while the respondents had a registered sale deed dt.01-03-2013 executed in favour 1st respondent by Krishna Rao Mulajkar, admittedly the owner of the premises. It observed that because the petitioner was claiming ownership of the property, he did not pay rents and has become willful defaulter from March, 2013 to June, 2013 and that the denial of title of respondents by petitioner is not *bona fide*. It also observed that respondents *bona fide* require the property in occupation of the petitioner since they have no other residential or non-residential properties and that under Ex.P-1, the wife of petitioner had purchased a residential house in the same locality and no prejudice would be caused to the petitioner.

7. Assailing the same, the petitioner filed R.C.A.No.54 of 2017 before the Additional Chief Judge, City Small Causes Court, Hyderabad.

8. The appellate authority noticed that the suit O.S.No.308 of 2013 filed by petitioner against respondents seeking declaration of his title and perpetual injunction against respondents and their vendor was dismissed for default on 30-09-2013; that on the death of the father of petitioner, the tenancy continued between petitioner and respondents' vendors; and after execution of Ex.P-15 registered sale deed by the owner of the R.C. schedule property to respondents and the attornment of tenancy notices issued by respondents and vendors on the same day under Ex.P-13, the respondents became the landlords of the R.C. schedule property and there was legal attornment of tenancy

in their favour. It therefore held that there was jural relationship of landlords and tenant between respondents and petitioner and the said relationship was subsisting and existing as on the date of filing of the eviction petition before the Rent Controller. It held that the plea of petitioner that Ex.P-15 was a concocted document is not established and so the denial of title by petitioner was not *bona fide*.

9. It also observed that though the petitioner pleaded that he entered into an agreement of sale with the original owner Krishna Rao Muljkar, he did not disclose when such agreement was entered into or the terms and conditions of the said agreement, or when he paid Rs.1,00,000/- towards advance sale consideration etc., and if really the said agreement of sale is a genuine one, petitioner would have filed a civil suit for specific performance of the agreement of sale instead of filing suit of declaration of title and injunction.

10. As regards default in payment of rent, the lower appellate authority observed that petitioner had taken contrary pleas i.e., he paid Rs.1,00,000/- towards advance of sale consideration to the vendor of respondents and he also paid rents upto November, 2015 to the vendor of respondents and such contradictory pleas cannot be taken into account.

11. It also took note of his admission that he continued to pay rents to the vendor of respondents even after receiving the letter of attornment of tenancy from the vendor of respondents as well as

respondents. It therefore held that petitioner has committed willful default in payment of rent from March, 2013 to June, 2013 and there is no evidence of payment of rent for the said period by petitioner.

12. Regarding the ground of *bona fide* requirement, the lower appellate Court noted that petitioner admitted that a notice was given by the Government asking the 2nd respondent to vacate the Government quarter and so the R.C. schedule property was required for personal occupation of the respondents. It also held that petitioner, through his wife, was running a Beauty Parlour in the R.C. schedule property though it was taken on lease for a residential purpose and petitioner had admitted in his evidence as R.W.1 that under Ex.P-1, his wife purchased a residential house at Muradmahal, inside Laldarwaja, Hyderabad. It held that though petitioner also secured alternative accommodation, he is not vacating the R.C. schedule property and chose to harass the respondents who are *bona fide* purchasers and landlords. It therefore dismissed the appeal with costs.

13. Assailing the same, this Revision is filed.

14. Learned counsel for petitioner contended that there is no jural relationship between the respondents and petitioner like that of landlords and tenant and both the Rent Controller and the lower appellate authority committed error in assuming that there was such a relationship.

15. Admittedly, Krishna Rao Muljkar was the original owner of the property. The petitioner is claiming title from him under an oral agreement of sale under which he claims to have paid Rs.1,00,000/- as advance sale consideration to the original owner.

16. Petitioner admittedly has not obtained any registered sale deed from the original owner conveying title to him nor has filed any suit for specific performance of alleged oral agreement of sale. He has not even stated when he entered into such an agreement and when he paid advance. Admittedly, O.S.No.308 of 2013 filed by petitioner for declaration of title and injunction was dismissed for default on 30-09-2013.

17. Respondents, on the other hand, obtained a registered sale deed Ex.P-15 on 01-3-2013 from the said Krishna Rao Muljkar and notices of attornments were also given by respondents and their vendor, which was received under Ex.P-13 by petitioner.

18. In **Ambica Prasad v. Mohd. Alam**¹, the Supreme court declared:

15. ...

“109. Rights of lessor’s transferee.—If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities

¹ (2015) 13 SCC 13

imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any court having jurisdiction to entertain a suit for the possession of the property leased.”

From a perusal of the aforesaid section, it is manifest that after the transfer of lessor's right in favour of the transferee, the latter gets all rights and liabilities of the lessor in respect of subsisting tenancy. The section does not insist that transfer will take effect only when the tenant attorns. It is well settled that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights. Since attornment by the tenant is not required, a notice under Section 106 in terms of the old terms of lease by the transferor (sic transferee) landlord would be proper and so also the suit for ejectment.

19. The attornment of tenancy by petitioner to respondents would thus be automatic on operation of law without necessity for any action on the part of petitioner in view of Section 109 of the Transfer of Property Act, 1882. Consequently, the petitioner would become the tenant of respondents and there would exist jural relationship of landlords and tenant between respondents and petitioner.

20. I am of the opinion that the Rent Controller and the lower appellate authority have thus rightly come to the said conclusion and have also given a finding that denial of title of respondents by petitioner is therefore not *bona fide*.

21. Since the only reason for non-payment of rents for the period March, 2013 to June, 2013 by petitioner to the respondents is his claim for ownership over the property under an oral agreement of sale, and since the said plea has not been established, the non-payment of rents has to be held to be willful and a result of supine indifference on the part of the petitioner.

22. So the Rent Controller and the lower appellate authority did not commit any error of law or fact in coming to the conclusion that the petitioner had committed willful default in payment of rent for the period from March, 2013 to June, 2013.

23. Coming to the plea of *bona fide* requirement, the petitioner himself has admitted that Ex.P-7 notice was given by the Government to the 2nd respondent asking him to vacate the Government quarter. Also, admittedly petitioner's wife is running a Beauty Parlour in the R.C. schedule premises though she has purchased under Ex.P-1 on 17-09-2013 another residential house in the same area. The petitioner could not establish that respondents' own any other property in the Cities of Hyderabad and Secunderabad.

24. Thus both the Rent Controller and the lower appellate Authority have rightly come to the conclusion that respondents *bonafidely* require the R.C. schedule property for their own occupation.

25. I therefore do not find any merit in the Revision and it is accordingly dismissed with costs of Rs.5,000/- (Rupees Five Thousand only) to be paid by petitioner to the respondents in 4 weeks.

26. However, the petitioner is granted time upto 31-05-2019 to vacate the premises, subject to the petitioner paying arrears of rent (after giving credit to the rents, if any, already deposited) within two (02) weeks from the date of receipt of copy of this order; and also filing an undertaking before this Court that he would vacate the R.C. schedule premises by the above mentioned date and he would pay arrears as directed above, within one week from the date of receipt of copy of this order.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-04-2019
Ndr/Vsv

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

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