

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.815 of 2019

ORDER:

This Revision is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 challenging the order dt.05-10-2018 in R.A.No.29 of 2017 of the Additional Chief Judge, City Small Cases Court, Hyderabad confirming the order dt.06-12-2016 in R.C.No.205 of 2014 of the IV Additional Rent Controller, City Small Causes Court, Hyderabad.

2. The 1st respondent initially filed the R.C. for eviction of respondents stating that she is the absolute owner of the R.C. schedule premises and that petitioners are tenants paying a rent of Rs.80/- p.m. and they committed willful default in payment of rent from July, 2011 to July, 2014.

3. According to the 1st respondent, the property devolved on her from her father M.Yadagiri Swamy.

4. Petitioners, on the other hand, denied the title of 1st respondent and contended that the husband of 1st petitioner by name Mallesh orally purchased the R.C. schedule property from M.Yadagiri Swamy in 1985. They contended that there is no jural relationship of land-lady and tenants between 1st respondent and themselves. They also filed a civil suit O.S.No.138 of 2006 for declaration of their title, but

the same was dismissed on 13-06-2014 and challenging the same, C.C.C.A.No.85 of 2014 was filed by petitioners.

5. According to petitioners, once the property was transferred from Yadagiri Swamy to Mallesh, the tenancy ceased and there was no question of payment of rents.

6. The 1st respondent examined herself as P.Ws.1 and P.W.2 was also examined and marked Exs.P-1 to P-5. R.Ws.1 and 2 were examined on behalf of petitioners and Exs.R-1 to R-10 were marked.

7. By order dt.06-12-2016, the Court below allowed the R.C. It observed that in his evidence, R.W.1 was silent about the existence of registered document evidencing the purchase by Mallesh and he also admitted that petitioners were tenants under the father of 1st respondent. The Rent Controller therefore held that there is no basis for the petitioners to deny the ownership of 1st respondent and mere pendency of C.C.C.A.No.85 of 2014 is not a *bona fide* ground for them to deny the ownership of 1st respondent. It therefore held that the denial of title of 1st respondent by petitioners is not *bona fide*. It held that the defence of petitioners that they need not pay rents from July, 2011 to July, 2014 cannot be accepted because the tenancy existed prior to 1985 and is deemed to continue thereafter also, and there is no evidence of the petitioners making payment of rents for the said period.

8. Petitioners then questioned the same in R.A.No.29 of 2017 before the Additional Chief Judge, City Small Causes Court, Hyderabad. While that appeal was pending, the 1st respondent died and her legal representatives were brought on record.

9. The said appeal was also dismissed on 05-10-2018 by the lower appellate Court confirming the findings of the trial Court. It held that there was a registered gift settlement deed dt.25-06-1976 executed in favour of 1st respondent and there was a legal attornment of tenancy in favour of 1st respondent by Mallesh, the husband of 1st petitioner. It also took note of the fact that R.W.1 admitted that Mallesh was inducted as a tenant by the father of 1st respondent, and he also stated that the rent was Rs.80/- p.m. during the lifetime of Mallesh. It disbelieved the purchase of property by Mallesh from the father of 1st respondent on the ground that the civil suit was filed by him was dismissed and so petitioners were not entitled to deny the jural relationship between the parties. It held that there is attornment of tenancy by Mallesh in favour of 1st respondent automatically once the registered gift settlement deed was executed by the father of the 1st respondent in her favour, which was marked as Ex.B-5 in O.S.No.138 of 2006. It therefore held that the denial of 1st respondent's title by petitioners is not *bona fide* and consequently it found that there is also willful default in payment of rents since there is no evidence of payment of rents for the period July, 2011 to July, 2014.

10. Assailing the same, this Revision is filed.

11. Though learned counsel for petitioners contended that the findings recorded by the Rent Controller and the lower appellate Court are erroneous and that the R.C. schedule property was sold by the father of 1st respondent to the husband of 1st petitioner by name Mallesh, and they were justified in denying the title of the 1st respondent, I am unable to agree with the said contentions.

12. Firstly, there is no registered document conveying title to Mallesh by the father of 1st respondent. Secondly, the Civil Suit O.S.No.138 of 2006 filed for declaration of title and injunction by the said Mallesh was dismissed on 13-06-2014. No doubt C.C.C.A.No.85 of 2014 is pending in this Court. Unless the said appeal is allowed, petitioners cannot have any right, title or interest in the property. But pending the said suit and appeal, the petitioners ought to have paid rents for the period July, 2011 to July, 2014 because in view of the finding given in the civil suit that there was a registered gift in 1976 in favour of 1st respondent, attornment of tenancy by Mallesh in favour of 1st respondent is automatic as held in **Manohar Singh (Dead by LRs.) Vs. Devi Charan and others**¹. Therefore, denial of title by petitioners is not *bona fide*. Also, there is no evidence of payment of rents by petitioners to 1st respondent for the period July, 2011 to July, 2014.

¹ AIR 1988 SC 1365

13. Therefore, the Courts below had rightly held that petitioners were liable for eviction and I see no reason to interfere with the said concurrent findings on fact.

14. Accordingly, the Civil Revision Petition fails and it is dismissed at the stage of admission. No costs.

15. However, petitioners are granted time till 30-06-2019 to vacate the R.C. schedule premises, subject to the petitioners depositing the entire arrears of rent from July, 2011 till date (after deducting amounts, if any already deposited or paid to respondents or in Court) within one month from the date of receipt of copy of this order and filing an undertaking before this Court, within two (02) weeks from the date of receipt of copy of this order, that they would vacate the R.C.schedule premises on 30-06-2019, and also that they would pay all arrears as aforesaid. In default of complying with either of these requirements, the petitioners shall be evicted forthwith from the R.C. schedule premises. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-03-2019
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