

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5170 of 2017

O R D E R:

This Revision is filed under Article 227 of the Constitution of India assailing the order dt.31.08.2017 in EA.No.118 of 2017 in EP.No.34 of 2017 in O.S.No.5 of 2003 of the IX Additional Senior Civil Judge at L.B.Nagar, R.R. District.

2. Petitioner herein is the Judgment Debtor in the above suit which was filed by the 1st respondent herein for eviction of the petitioner from the suit schedule premises and for recovery of arrears of rent.

3. Written statement was filed by the petitioner therein opposing the suit claim. In the written statement, petitioner took a plea that he was in occupation of the suit schedule property as owner and legal title holder; that the 1st respondent is not entitled to recovery of possession; and there was no question of paying any rent.

4. The suit was decreed on 18.01.2010 and the petitioner was directed to vacate the suit schedule property and deliver vacant possession of the suit schedule property to 1st respondent on or before 18.03.2010 failing which 1st respondent was given liberty to evict the petitioner by due

process of law. It was also held that the 1st respondent would be entitled to receive Rs.62,000/- towards rent and also rent @ Rs.1,000/- per month from November, 2010 till realization.

5. This was challenged by the petitioner in A.S.No.132 of 2010 before the Principal District Judge, Ranga Reddy District at L.B. Nagar.

6. In the appeal, it was the contention of the petitioner that he was the owner of the suit schedule property and that he had purchased the suit schedule property from Adharshnagar Co-operative House Building Society from and out of the joint family funds of his father-Laxminarayana.

7. The said appeal was also dismissed on 01.10.2015.

8. Petitioner thereafter sought review of the said judgment of the appellate Court which was also admittedly dismissed on 07.06.2017.

9. Thereafter, the Decree Holder/1st respondent filed E.P.No.34 of 2017 for execution of the decree in O.S.No.5 of 2003 by evicting the petitioner.

10. Petitioner then filed E.A.No.118 of 2017 under Section 47 of the CPC for the first time taking a plea that the decree

is in-executable and relief claimed by the 1st respondent under the Execution Petition is barred under law pursuant to Section 32 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. Another contention was also raised that there was formation of districts consequent to the creation of the State of Telangana; that the territorial jurisdiction has been vested in Medchal District Court; and so the EP is not maintainable.

11. This application was opposed by the 1st respondent who pointed out that the petitioner had lost the suit O.S.No.5 of 2003 and appeal A.S.No.132 of 2008 as well as the Review Petition. The contention of the petitioner that EP is not maintainable was also denied.

12. By order dt.31.08.2017 the Court below dismissed the said application after recording the contentions of the parties and noting that the decree in the suit was confirmed in Appeal and in the Review Petition. It referred to several decisions cited by the counsel for the petitioner. The Court below held that the petitioner had already lost the suit and the Appeal as well as the Review Petition, and the judgments cited by the petitioner has no application. It also rejected the contention of the petitioner regarding territorial jurisdiction of the said Court and held that notwithstanding

the formation of Telangana State and creation of new districts, there has been no bifurcation of territorial jurisdiction of the Courts and so the EP was maintainable.

13. Assailing the same, this Revision is filed.

14. Heard Sri J.C.Fancis, counsel for petitioner and Sri P.Venkata Swamy, Counsel for respondent.

15. Counsel for the petitioner contended that under Section 10(1) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, a tenant cannot be evicted in execution of a decree except in accordance with the provisions of Section 10 or 12 or 13, and though this point was vehemently argued in the Court below, it did not deal with the said point. He also placed reliance on the judgment of the Supreme Court in ***Sarwan Kumar and another v. Madan Lal Aggarwal***¹.

16. In ***Sarwan Kumar***'s case(1 supra), the Supreme Court observed as under:

“18. In the present case because of the operation of Section 14 of the Act the only authority to pass a decree for ejectment of the tenanted premises is the Rent Controller appointed under the Act and Section 50 of the Act specifically bars the jurisdiction of the civil court to entertain any suit or proceeding in so far as it relates to the eviction of any tenant from the premises which were covered by the Delhi Rent Control Act. The civil court lacked the inherent jurisdiction to take cognizance of the cause and to

¹ AIR 2003SC 1475

pass a decree. Challenge to such a decree on the ground of nullity could be raised at any later stage including the execution proceedings. Tenancy of the building was governed by a special Act and therefore the decree passed by the civil court was a nullity and therefore inexecutable. Judgment-debtors had not filed their written statement in the civil court and no issue regarding the jurisdiction of the civil court to try the suit was framed. Tenant in the special leave petition in this Court raised the contention that the eviction decree passed by the civil court could not be executed against them. This Court refused to go into that question as it was not the subject matter of the order under appeal. It was left open to the judgment-debtors to raise this ground before the appropriate forum, if available to them under law. The only forum where the judgment-debtors could raise the objection regarding the executability of the decree was in the execution proceedings which they did. Since the jurisdiction of the civil court was barred, the decree passed by it was a nullity and the judgment-debtors could successfully raise objection regarding the executability of such a decree. The executing court erred in holding that judgment-debtors could not raise the objection to the executability of the decree being nullity having been passed by a court lacking inherent jurisdiction to do so.”

17. He therefore contended that even in the instant case petitioner cannot be denied the opportunity to raise the plea in the Execution Petition about the executability of the decree on the ground that the Court, which passed the decree, had no inherent jurisdiction and petitioner ought to have been allowed to raise the said plea and execution of the decree ought to have been stayed giving liberty to the 1st respondent to approach the Competent Authority under A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 to evict him.

18. It is important to note that in the Written Statement filed by the petitioner in the suit, petitioner in fact denied that he was a tenant of the 1st respondent and claimed that he was the owner of the suit schedule property. He never raised a plea that he was a tenant of the suit schedule property. However in the decree passed in O.S.No.5 of 2003 he was found to be a tenant and his eviction was ordered and the same was also confirmed in AS.No.132 of 2010 as well as in the Review Petition filed thereafter.

19. It is not disputed by the counsel for petitioner that petitioner never argued either in the suit or in the appeal or in the review petition that he was a tenant of the suit schedule property and was entitled to protection of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 and that the suit itself was not maintainable.

20. Had there been any such pleading in the suit, may be the petitioner could have agitated the issue in execution proceedings. But when the petitioner never raised such a plea in the suit or in the appeal or in the review petition, and in fact asserted that he was the owner of the suit schedule property, it would be an abuse of process of Court to allow the petitioner to raise the plea that he is a tenant governed by the provisions of the A.P. Buildings (Lease, Rent and

Eviction) Control Act, 1960, and that he can be evicted only by following the procedure under the Act.

21. Rule 32 quoted by the petitioner in EA.No.118 of 2017 in fact deals with buildings to which the Act does not apply, and it appears as if the petitioner himself, by quoting the said provision, suggested that the Act will not apply to the subject building though he claimed that the EP is barred under law because of that provision.

22. As regards the contention of the petitioner regarding change of territorial jurisdiction of the Court below on the creation of new districts after formation of the State of Telangana is concerned, since admittedly there is no bifurcation of territorial jurisdiction of the Civil Courts, the said plea is also without any merit.

23. I therefore do not find any error of jurisdiction in the orders passed by the Courts below warranting interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

24. Accordingly, this Civil Revision Petition fails and it is dismissed. Consequently, interim order granted on 04.10.2017 in CRP.MP.No.6727 of 2017 in the Revision is vacated. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

15th March, 2019.

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