

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1894 of 2019

ORDER:

This Revision is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act') challenging the order dt.14-06-2019 in R.C.A.No.48 of 2018 of the Chief Judge, City Small Causes Court at Hyderabad (hereinafter referred to as the 'Appellate Authority under the Act') confirming the order dt.19-04-2018 in RC.No.242 of 2004 of the I Additional Rent Controller, City Small Causes Court, Hyderabad (hereinafter referred to as the 'Rent Controller').

2. Petitioners herein are tenants of the 1st respondent.

The plea of the 1st respondent/landlord in the RC

3. The 1st respondent filed an eviction petition under Section 10(2)(i) of the Act for eviction of petitioner No.1 and respondent No.2 represented by G. Lingiah from the R.C. schedule property on the ground of willful default of payment of rents from June, 1999 to June, 2004. He contended that he is the owner of the said non-residential property, which he inherited by way of succession from his mother late Smt. Saraswati Bai, who died on 08-11-2000; that 2nd respondent is the tenant of the said property on monthly rent of Rs.300/-; that the 2nd respondent was carrying on business of typewriting and photocopying centre in the name of 1st petitioner; that 2nd respondent was to pay rents on or before 10th day of every

succeeding tenancy month; and he last paid rent on 17-05-1999 and thereafter stopped. He contended that 2nd respondent fell in arrears of rent of Rs.11,100/- for 37 months from June, 1999 to June, 2002 at Rs.300/- p.m.; that he filed R.C.No.322 of 2002 before the VIII Additional Rent Controller, City Small Causes Court, Hyderabad, which was dismissed on 08-05-2003 for default, and even thereafter the default in payment of rents continued and so he filed this eviction petition.

The plea of the Petitioner No.1 and Respondent no.2/ Legal representatives of G.Lingiah in the Counter in the RC.

4. Petitioner No. 1 and respondent Nos.2 filed a counter stating that they are paying rents regularly till the date of filing of eviction petition as per an oral agreement with the mother of the 1st respondent, and thereafter the 1st respondent was receiving rents. While admitting that 2nd respondent was the tenant, it is contended that petitioner No.1 and respondent Nos.2 did not insist on issuance of rent receipts by 1st respondent. They alleged that they last paid rent on 10-07-2004. According to them, since R.C.No.322 of 2002 was dismissed for default, and the 1st respondent did not get it restored, the 1st respondent cannot take the alleged default in payment of rent by the time of filing of R.C.No.322 of 2002 as a ground to seek eviction of petitioner No.1 & Respondent No.2 in this eviction petition RC No.242 of 2004 and that it is barred by *res judicata*. It is contended that the claim for rents made by 1st respondent for the period beyond 3 years is barred by limitation; and that after filing of eviction petition,

offers of rent were made to the 1st respondent, who had rejected the same.

5. Pending the eviction petition, G.Lingaiah representing the 1st petitioner and also the 2nd respondent died and his legal representatives were brought on record. They are the petitioners 2 and 3 and respondents 3-8.

6. Petitioner Nos.2 and 3 and 3rd respondent, who are the legal heirs of the said G.Lingaiah filed additional counter asking the 1st respondent to prove that he is the owner of the R.C. schedule property by way of inheritance and by way of succession from his mother late Saraswati Bai by submitting documents.

The order dt.19-4-2018 of the Rent Controller in the RC

7. Before the Rent Controller, the 1st respondent examined himself as P.W.1 and marked Exs.P-1 to P-15. Thereafter 3rd petitioner got examined himself as R.W.1 and did not mark any documents.

8. The following issues were framed by the Rent Controller:

“1. Whether there is any jural relationship between the petitioner and respondents as landlord and tenants in respect of the petition schedule property?

2. Whether the denial of title of the petitioner by the respondents is mala fide?

3. Whether the present RC is hit by res judicata?

4. Whether the respondents have committed willful default in payment of monthly rents for 37 months amounting to

Rs.11,100/- from June, 1999 to June, 2002 @ Rs.300/- per month?

5. To what relief?"

9. By order dt.19-04-2018, the Rent Controller allowed the R.C. and directed eviction of the petitioners and respondent No.s 3-8.

10. The Rent Controller held that it was not open to petitioner Nos.2 and 3 and 3rd respondent to question the title of 1st respondent to the property because in the counter filed by G.Lingaiah on behalf of 1st petitioner and 2nd respondent, such a plea was not raised. He relied on Section 116 of the Evidence Act, 1872 and held that petitioner Nos.2 and 3 and 3rd respondent are estopped from denying the title of 1st respondent in respect of the R.C. schedule property.

11. He relied on the counter filed by G.Lingaiah in this R.C. admitting that he is the tenant of 1st respondent and also the evidence of R.W.1 corroborating it, and held that there is jural relationship of landlord and tenant between 1st respondent and G.Lingaiah, through whom petitioners and respondent Nos.3 to 8 claimed.

12. On the aspect of default, it was held by the Rent Controller that there was no decision on merits in R.C.No.322 of 2002 filed earlier by the 1st respondent because it was dismissed for default on 08-05-2003; and since the adjudication in the said case was not on merits and there was no trial also in the said eviction petition, the 1st respondent was entitled to plead in the eviction petition R.C.No.242 of 2004 willful default even for the period between June, 1999 to June, 2002, which was the subject matter of R.C.No.322 of 2002. It also held that the

petitioners and respondent Nos.2 to 8 did not file any documentary proof in respect of their claim that they paid rents till May, 2003; and the petitioners and respondent Nos.3 to 8 could not prove that they had paid rents in lumpsum for the period June, 1999 to June, 2002 to the 1st respondent because of which R.C.No.322 of 2002 was dismissed for default.

13. He also observed that if the petitioners and respondent Nos.2 to 8 had paid rents, they should explain why they did not demand rental receipts through legal notice issued to 1st respondent which they did not. He also took into account the conduct of petitioners and respondent Nos.3 to 8 in filing I.A.No.249 of 2016 under Section 11(1) of the Act seeking permission to deposit rent from April, 2007 to November, 2016 as further evidence of default by petitioners and respondent Nos.3 to 8; and observed that if petitioners and respondent Nos.3 to 8 were serious about payment of rents, then they would have invoked Section 8(5) of the Act.

The order dt.14-6-2019 in the RCA

14. Challenging this order, petitioners filed R.C.A.No.48 of 2018 before the Appellate Authority under the Act.

15. By order dt.14-06-2019, the said appeal was also dismissed. The Appellate Authority under the Act re-appreciated the evidence on record. He held that late G.Lingaiah filed counter in R.C.No.242 of 2004 admitting that he is the tenant of the

1st respondent and earlier he was paying rents to the 1st respondent's mother and that he did not deny the title of the 1st respondent.

16. He then referred to the counter-affidavit filed in I.A.No.183 of 2009 on 13-07-2009 by petitioner Nos.2 and 3 and held that they denied in the said counter, the title of 1st respondent and such denial of title is *mala fide* and they cannot set up rival title to the R.C. schedule property.

17. He also relied on the evidence of R.W.1 and held that in his cross-examination he admitted that his father G.Lingaiah used to pay rents to the 1st respondent and after his father passed away, he used to pay the rents to 1st respondent.

18. He held that though 1st respondent was an adopted son of late Saraswathi Bai and there is no registered adoption deed filed, still the 1st respondent would fall within the definition of 'landlord' under the Act and the question whether the 1st respondent is the adopted son or not is not necessary to be gone into.

19. He agreed with the Rent Controller that the dismissal of R.C.No.322 of 2002 for default has no bearing on the present eviction petition because the said R.C. had been dismissed not on merits and the provisions of Section 11 C.P.C. would not be attracted.

20. He also upheld the plea of willful default in payment of rent taken by 1st respondent on the ground that no evidence has been produced by petitioners and respondent Nos.3 to 8 that they had paid rents to the 1st respondent for the period June, 1999 to June, 2004.

21. He rejected the plea of petitioners and respondent Nos.3 to 8 that there was a settlement before the dismissal of R.C.No.322 of 2002 with the 1st respondent because no evidence of any such compromise had been produced. He further observed that nothing prevented the petitioners and respondent Nos.3 to 8 to invoke Section 8(5) of the Act seeking permission to deposit the rents, if 1st respondent was refusing to receive rents from June, 2003 till filing of the R.C.No.242 of 2004. He also noted that petitioners and respondent Nos.3 to 8 did not pay or deposit rents till 2016 since they had filed I.A.No.249 of 2016 under Section 11(1) of the Act seeking permission to deposit rents and this also proves the willful default.

22. Assailing the same, this Revision is filed.

23. Heard Sri R.A.Achuthanand, learned counsel for petitioners and Sri Shyam S.Agarwal, learned counsel for 1st respondent.

The present Revision/ Consideration by the Court

24. From the facts narrated above, it is clear that G.Lingaiah representing 1st petitioner and 2nd respondent initially filed a counter in R.C.No.242 of 2004 admitting that he is a tenant of 1st respondent and they were previously paying rents to the 1st respondent's mother and thereafter he was paying rents to the 1st respondent.

25. The legal heirs of G.Lingaiah i.e. petitioner Nos.2 and 3 and 3rd respondent therefore could not have taken pleas in their additional counter filed, after coming on record in R.C.No.242 of 2004 after the death of G.Lingaiah, throwing a doubt about the ownership of 1st

respondent over the R.C. schedule property. They cannot be permitted to deny the existence of jural relationship of landlord and tenant between 1st respondent and themselves and other respondents. But in the counter-affidavit filed by them on 13-07-2009 in I.A.No.183 of 2009 in the RC 242 of 2004 they not only denied the title of 1st respondent, they also set up rival title to the R.C. schedule property. It has to be therefore concluded that the denial of title of 1st respondent by petitioners and Respondents 3-8 is *mala fide*.

26. It may be that R.C.No.322 of 2002 filed by 1st respondent alleging willful default in payment of rent from June, 1999 to June, 2002 was dismissed for default on 08-05-2003.

27. In **Shivashankar Prasad Shah v. Baikunth Nath Singh**¹, the Supreme Court held that if a suit is dismissed for default, the said decision does not operate as *res judicata* and bar a later suit. It declared :

“ 4. Before a plea can be held to be barred by the principles of res judicata, it must be shown that the plea in question had not only been pleaded but it had been heard and finally decided by the court. A dismissal of a suit for default of the plaintiff, we think, would not operate as res judicata against a plaintiff in a subsequent suit on the same cause of action. If it was otherwise there was no need for the Legislature to enact Rule 9 Order 9 of the Civil Procedure Code, which in specific terms says that where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. The contention that the dismissal of a previous suit for default of the plaintiffs operates as res judicata in a subsequent suit in respect of the same claim was repelled by the Judicial Committee of the Privy Council in

¹ (1969) 1 SCC 718

Maharaja Radha Parshad Singh v. Lal Sahab Rai². *Therein the Judicial Committee observed thus:*

“None of the questions, either of fact or law, raised by the pleadings of the parties, was heard or determined by the Judge of the Shahabad Court in 1881; and his decree dismissing the suit does not constitute res judicata within the meaning of the Civil Procedure Code. It must fall within one or other of the sections of Chapter VII of the Code; in the present case it is immaterial to consider which, the severest penalty attached to such dismissal in any case being that the plaintiff cannot bring another suit for the same relief.”

*5. From this decision it is clear that the Judicial Committee opined that before a plea can be held to be barred by res judicata that plea must have been heard and determined by the court. Only a decision by a court could be res judicata, whether it be statutory under Section 11 of the Civil Procedure Code or constructive as a matter of public policy on which the entire doctrine rests. Before an earlier decision can be considered as res judicata the same must have been heard and finally decided — see **Pulvarthi Venkata Subba Rao v. Valluri Jagannadha Rod**³.”*

28. So the said dismissal of RCC 322 of 2002 does not operate as *res judicata* since there is no decision on merits in the said R.C., and the 1st respondent is entitled to plead the period of default from June, 1999 to June, 2002 which was the subject matter of the said R.C. as a ground for eviction of 1st petitioner and 2nd respondent while filing R.C.No.242 of 2004 also.

29. The contention of the counsel for petitioners that 1st respondent cannot do so, has no legal basis, and is rejected.

30. Though learned counsel for petitioners sought to contend that there was a compromise with 1st respondent because of which

² LR 17 IA 150 (PC)

³ 1964 (2) SCR 310

R.C.No.322 of 2002 came to be dismissed for default on 08-05-2003, there is no plea about such a compromise in the counter affidavit filed by Late G.Lingiah or in the additional counter affidavit filed by petitioners and Respondents 3-8 and no evidence of such compromise or settlement between the parties has been produced by petitioners. So the said contention also has no legs to stand.

31. No evidence had been adduced by petitioners to prove payment of rents from June, 1999 to June, 2004 and this indicates supine indifference on the part of petitioners in payment of monthly rents to the 1st respondent.

32. I therefore do find any error of law or fact in the order of eviction passed by the Rent Controller in R.C.No.242 of 2004 or the Appellate Authority under the Act in R.C.A.No.48 of 2018.

33. For the aforesaid reasons, the Civil Revision Petition is accordingly dismissed with costs of Rs.20,000/- (Rupees Twenty Thousand only) to be paid by petitioners to 1st respondent within six (06) weeks; the petitioners are granted time till 06-01-2020 to vacate the R.C. schedule property, which is subject matter of R.C.No.242 of 2004, on condition of petitioners depositing all the arrears of rent from June, 1999 till date to the credit of the R.C. within six (06) weeks from the date of receipt of copy of the order, and continue to pay the rents till 06-1-2020 and also subject to the petitioners filing an undertaking before the Rent Controller that they would vacate the R.C. schedule property by 06-01-2020 and that they would also

deposit all the arrears of rent for the period June, 1999 till date within the period of six (06) weeks as aforesaid. In default of compliance of any of these conditions, petitioners are liable to be evicted from the R.C. schedule property forthwith.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-09-2019

Vsv

