

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1931 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.25-06-2019 in R.C.A.No.4 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.24-11-2017 in R.C.No.460 of 2007 of the III Additional Rent Controller, City Small Causes Court, Hyderabad (hereinafter referred to as 'the Rent Controller').

2. The petitioners herein are tenants of the respondent in respect of non-residential premises bearing Municipal No.5-4-434/4, Nampally Station Road, Hyderabad.

3. In that premises, there are 3 other mulgies other than the one in the occupation of the petitioners.

4. The respondent purchased the property from the legal heirs of the earlier owner late M.Padmanabha Rao under a registered sale deed Ex.P-1 dt.30-06-1999. A notice was issued by the respondent calling upon the petitioners to pay rents from August, 1999 to April, 2000 amounting to Rs.9,900/-.

5. Instead of paying the said amounts to the respondents, petitioners filed O.S.No.4076 of 1999 for specific performance and

the plaint in the said suit was returned, but they did not resubmit the same.

6. The respondent then issued a notice dt.30-3-2000 terminating the tenancy by the end of April, 2000 and calling upon the petitioners to vacate and handover vacant possession of the R.C. schedule premises.

7. The petitioners did not vacate the RC schedule premises and so the respondent filed in October, 2007, R.C.No.460 of 2007 for eviction of the petitioners from the R.C. schedule premises.

The plea of the respondent in the Eviction Petition

8. It is the contention of the respondent that the quantum of rent is Rs.1,100/- p.m., that the tenancy is oral and from month to month and the petitioners committed default in payment of rent from September, 1999 to October, 2007 amounting to Rs.1,08,000/-. She also sought eviction of the petitioners on the ground of *mala fide* denial of title of the respondent.

9. Apart from these two grounds, respondent also contended that she requires the R.C. schedule premises *bona fide* to establish her business. She pleaded that she was doing business in a rented premises at 5-4-623/1, Kattalmandi, Nampally on the ground floor and she intends to shift her business to the R.C. schedule premises which is more convenient and which is facing the main road.

The plea of the Petitioners

10. Petitioners filed counter opposing the said application. They alleged that the previous owner of the premises, from whom they have taken the property on lease in 1975, had agreed to sell it to them under an agreement of sale dt.22-12-1995 and that he died before execution of the sale deed. They contended that they are in occupation of the R.C. schedule premises in the capacity of owners; that after the demise of the previous owner, his legal heirs inherited the property; and petitioners had got issued a legal notice dt.05-08-1999 to the legal heirs calling upon them to execute a registered sale deed in petitioners' favour, but they did not respond. It is contended that the legal heirs of the previous owner suppressed the said agreement dt.22-12-1995 executed in favour of petitioners by the previous owner and then executed Ex.P-1 registered sale deed in favour of respondent. They claimed that they had filed O.S.No.4076 of 1999 for specific performance and that the said suit is pending. They denied the relationship of landlord and tenant between the respondent and themselves.

11. Before the Rent Controller, the respondent examined P.Ws.1 to 5 and marked Exs.P-1 to P-87. The petitioners examined R.Ws.1 and 2 and marked Exs.R-1 to R-4 and R-6 to R-8. Apart from this, Exs.X-1 to X-5 were also marked.

The order dt.24-11-2017 of the Rent Controller in the Eviction petition

12. The Rent Controller passed orders on 24-11-2017 allowing the eviction petition holding that there was jural relationship of landlord and tenant between the respondent and petitioners and denial of title of respondent by petitioners is *mala fide*. She also held that petitioners did not pay rents from 1999 till date of filing of eviction case in October, 2007 and they thus committed willful default in payment of rents. She also held that the respondent had proved her *bona fide* requirement of the R.C. Schedule premises.

13. The Rent Controller held that in his evidence, the 1st petitioner as R.W.1 admitted that he knew that the R.C. Schedule property was sold to the respondent; that respondent had issued notice to him intimating that she purchased it after she purchased the property; and that R.W.1 issued a reply under Ex.X-1, in which he did not dispute about the identity of the property purchased by respondent with regard to boundaries or sub-division numbers. The Rent Controller also noticed that R.W.1 admitted that the legal heirs of late M.Padmanabha Rao also issued notice to him that they sold the R.C. Schedule property to respondent under Ex.P-1 registered sale deed and to pay rents to the respondent, and observed that petitioners did not produce any registered sale deed or decree of specific performance to prove their contention that they purchased the R.C. Schedule property from late Padmanabha Rao. He also observed that O.S.No.4075 of 1999 filed by 1st petitioner was returned after amendment of the plaint for want of pecuniary jurisdiction and there is no evidence that

1st petitioner had represented the said suit before the appropriate forum agitating his rights basing on the alleged agreement of sale dt.22-12-1995. The Rent Controller, therefore, held that only to avoid payment of rents to the respondent such a plea was raised by the petitioners.

14. On the aspect of default, the Rent Controller held that even according to R.W.1, he last paid monthly rent in May, 1999 and that till filing of the eviction petition in 2007, he did not pay rents though he knew about purchase of property by the respondent; that he did not file any petition under Section 9 of the Act for deposit of rents into Court if he entertained any doubt as to the person to whom he should pay the rents; and that petitioners did not invoke Section 8(5) of the Act to permit them to deposit the monthly rents to the credit of the eviction petition from June, 1999.

15. Coming to the ground of *bona fide* requirement, the Rent Controller held that petitioners did not take any plea that the respondent was having other non-residential premises in twin cities of Hyderabad and Secunderabad, and the evidence of P.Ws.1 and 2 discloses that respondent requires the R.C. Schedule premises for enhancement of her family business. The Rent Controller thus dismissed the eviction Petition.

The order dt.25-6-2019 in the RCA No.4 of 2018

16. Challenging the same, the petitioners filed R.C.A.No.4 of 2018 before the Appellate Authority under the Act.

17. By order dt.25-06-2019, the said appeal was also dismissed.

18. The Appellate Authority observed that respondent had issued notice and attornment of tenancy letter Exs.P-2 and P-5 before filing of the eviction petition after she purchased the property under Ex.P-1 sale deed and these notices were also received by petitioners under acknowledgments Ex.P4 and Ex.P6, but they did not send any reply; therefore there exists jural relationship of landlord and tenant between respondent and petitioners.

19. It also rejected the plea of the petitioners about their purchase of the R.C. Schedule premises under agreement of sale dt.22-12-1995 on the ground that P.W.3, the son of the previous owner Padmanabha Rao, deposed that his father never agreed to sell the R.C. schedule property to the petitioners and he did not execute any agreement of sale in their favour.

20. It also observed that any change in sub-division numbers of municipal numbers given to the premises is not relevant and that cannot be a valid ground to deny the jural relationship between the parties.

21. It noted the admission of 1st petitioner as R.W.1 that even after he received notice from the respondent and also from the legal heirs of the previous owner Padmanabha Rao, he did not pay rents in respect of the R.C. Schedule property to anyone and he had last paid rent in May, 1999 to the legal heirs of late Padmanabha Rao, earlier owner.

22. It also noted that R.W.1 admitted that he did not file any document to show that he paid rents to the legal heirs of Padmanabha Rao from May, 1999.

23. After observing that petitioners did not take steps by invoking Section 8(5) and 9(3) of the Act, the Appellate Authority observed that it was not the case of the petitioners that respondent had refused to receive monthly rent without sufficient case. The appellate authority thus confirmed the finding of willful default.

24. On the aspect of *bona fide* requirement, the Appellate Authority accepted the evidence of P.W.1 that she requires *bona fide* the R.C. Schedule property to carry on her furniture business, which she was carrying on as a tenant in the premises at Kattalmandi, Nampally Station Road, Hyderabad and the petitioners did not establish that respondent owned any other non-residential premises in Hyderabad.

The present Revision

25. Challenging the same, this Revision is filed.

26. Sri B.Vijayasen Reddy appearing for Sri Sharad Sanghi, learned counsel for petitioners contended that the Rent Controller as well as the Appellate Authority under the Act did not properly appreciate the evidence on record; that they ought to have held that there is no jural relationship of landlord and tenant between the respondent and petitioners; that denial of title of respondent by petitioners is *bona fide*; and even otherwise, the findings of the Rent

Controller and the Appellate Authority on the aspect of willful default and *bona fide* requirement, cannot be sustained.

The Consideration by the Court

27. As stated above, the plea of petitioners was that the original owner of the property late Padmanabha Rao had executed an agreement of sale dt.22-12-1995 in favour of 1st petitioner.

28. Though 1st petitioner claimed that he filed a suit O.S.No.4076 of 1999 for specific performance against the legal heirs of late Padmanabha Rao and also to cancel the sale deed executed by his legal heirs in favour of respondent, as per the evidence of P.W.1, the plaint in the said suit was returned for presentation before proper Court and was not re-presented again.

29. Learned counsel for petitioners is unable to point out how the title in the R.C. schedule property got conveyed to the petitioners when there is no sale deed executed in favour of the petitioners by the previous owner late Padmanabha Rao or his legal heirs, and when there is no decree for specific performance of the said agreement of sale in their favour.

30. It is settled law that an agreement of sale does not create any right, title or interest in the purchaser without there being any registered sale deed in his favour from the owner. In fact the said agreement of sale had not even been filed by the petitioners before the Rent Controller and the Appellate Authority.

31. The 1st petitioner as R.W.1 admitted in his cross-examination that the R.C. schedule property was sold to the respondent by the legal heirs of late Padmanabha Rao and that prior to purchase, the respondent herself issued notice and attornment letter of tenancy Exs.P-2 and P-5, which was received by him under acknowledgements Ex.P4 and Ex.P6.

32. Under Section 107 of the Transfer of Property Act, 1882, the attornment of tenancy is automatic and by operation of law, and so the respondent became the owner of the R.C. schedule property and the petitioners, who were tenants therein, became her tenants.

33. Thus, there exists a jural relationship of landlord and tenant between respondent and petitioners and it was not necessary for the petitioners to accept that respondent as their landlord by any act.

34. The 1st petitioner as R.W.1 has admitted that he never paid rents after May, 1999 to the legal heirs of late Padmanabha Rao or to anybody else.

35. From the above facts, it is clear that in spite of there being a jural relationship of landlord and tenant between respondent and themselves, the petitioners denied the title of respondent without any valid basis. Such denial of title of respondent by petitioners is *mala fide*.

36. Nonpayment of rents from May, 1999, which is admitted by petitioners, is without any valid reason and when the petitioners did not avail either Section 8(5) or Section 9(3) of the Act for deposit of

rents, it would have to be held to be willful default in payment of rents.

37. The respondent had established through her evidence and also the evidence of P.W.4 that she was doing business in a rented premises in Kattalmandi, Nampally Station Road, Hyderabad and she *bona fidely* requires the R.C. schedule premises for her own business and occupation. The petitioners were unable to show that respondent had any other non-residential vacant premises in the twin cities of Hyderabad and Secunderabad. Therefore the finding on the point of *bona fide* requirement of both the Rent Controller as well as the Appellate Authority under the Act on this aspect also did not warrant any interference.

38. Accordingly, the Civil Revision Petition is dismissed at the admission stage with costs of Rs.5000/-. However, the petitioners are granted time till 18-12-2019 to vacate the R.C. schedule property and hand over possession of the same to the respondent; they shall also deposit arrears of rent, if any, payable to the respondent to the credit of the R.C. within three (03) weeks from the date of receipt of copy of the order and shall continue to deposit the rent to the credit of the R.C. till 18-12-2019 on or before 5th of every month. The petitioners shall also file an undertaking before the Rent Controller that they would not only vacate the R.C. schedule property by 18-12-2019, but will also pay the arrears of rent within the time aforesaid and continue to pay the monthly rents as stated above. In default of non-payment of

arrears of rent or filing the undertaking as aforesaid, the petitioners shall be liable to be evicted forthwith.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-09-2019

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