

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2977 of 2018

ORDER:

Heard counsel for petitioner and the counsel for respondent.

2. This Revision is filed under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 challenging the order dt.07.03.2018 in R.A.No.164 of 2015 of the Additional Chief Judge, City Small Causes Court, Hyderabad confirming the order dt.21.07.2015 in RC.No.150 of 2010 of the Principal Rent Controller, City Small Causes Court, Hyderabad.

3. The said RC was filed by the respondent against the petitioner for willful default in payment of rent from June, 2009 to March, 2010 and also for malafide denial of title by the petitioner.

4. In the RC, the respondent contended that the subject property was ancestral property of Ajit Kumar Jain and Ajay Kumar Jain; that petitioner was in occupation of a mulgi on north-west corner of the above referred property and is carrying on business under the name and style M/s Kolhapuri Chappal House; that Ajay Kumar Jain, being Kartha of joint family, was collecting rent from the petitioner

and rent at the time of filing of the RC was Rs.550/- per month exclusive of electricity consumption charges and municipal property taxes; that there was a dispute with regard to partition of ancestral properties of Ajit Kumar Jain, and Ajay Kumar Jain in filed suit O.S.No.8 of 1995 on the file of V Senior Civil Judge, City Civil Court, Hyderabad against Ajit Kumar Jain for partition; that in the said suit all the tenants including the petitioner were arrayed as defendants and the petitioner was shown as 8th defendant therein.

5. Pending the said suit, there was a direction by the Court in I.A.No.61 of 1995 to deposit rent by the tenants including the petitioner; and later the suit was dismissed for default.

6. It is also contended that petitioner himself filed RC.No.368 of 2001 against Ajit Kumar Jain and Ajay Kumar Jain and Mohit Kumar Jain before the I Additional Rent Controller, Hyderabad for deposit of rent under Section 9(3) of the Act; that the respondents there in remained *ex-parte* and on 06.03.2002, the I Additional Rent Controller, Hyderabad directed the petitioner to deposit rent @ Rs.550/- per month from July, 2001 onwards on or before 10th of every succeeding month to the credit of the said RC. It is alleged

that petitioner was irregularly depositing the rent to the credit of the RC.No.368 of 2001.

7. Subsequently, there was a partition of the ancestral properties between Ajit Kumar Jain and his brother Ajay Kumar Jain under registered Partition Deed dt.28.05.2004 executed between them; that by virtue of the said partition, the mulgi in the occupation of the petitioner fell to the share of Ajit Kumar Jain and it was also intimated to the petitioner; that later Ajit Kumar Jain sold the mulgi in occupation of the petitioner along with abutting mulgies to the respondent under a registered Sale Deed bearing document No.1253 of 2009 dt.28.05.2009 as modified by a Rectification Deed document No.2744/2009 dt.18.11.2009.

8. It is contended that Ajit Kumar Jain was entitled to receive rents from the petitioner up to May, 2009 and subsequent thereto, respondent is entitled to receive the rent, but the petitioner was not paying rents to the respondent from June, 2009 and thus committed willful default in payment of rent.

9. He also contended that the petitioner set up title in respect of the RC schedule property with the Government of A.P. intentionally out of oblique motives by suppressing the

factum of tenancy of the RC schedule property by describing himself as encroacher on the government land and obtained regularization of encroachment in respect of the RC schedule property in terms of G.O.Ms.No.166 dt.16.02.2008 by paying consideration amount to the Government and thus renounced his status as a tenant and this amounts to malafide denial of title.

10. Petitioner filed a counter opposing the RC and contending that the respondent is a stranger to him. He alleged that the partition among the family members of Ajay Kumar Jain and Ajit Kumar Jain is bogus to grab the government property. He denied that the property in his occupation is ancestral property of Ajay Kumar Jain and Ajit Kumar Jain. He also alleged that Government of A.P., is a necessary party to the RC. He denied the title of the vendors of the respondent and also denied the existence of relationship of landlord and tenant between himself and respondent. He claimed to have obtained a document dt.04.06.2009 from the State Government conferring title on him and alleged that the said document was not got cancelled by the respondent and so the denial of title was bonafide.

11. Before the Rent Controller, the following issues were framed:

- “1. Whether the respondent has obtained the schedule property as a tenant?
2. Whether the respondent is originally inducted as a tenant in respect of petition schedule property from the father of Sri Ajit Kumar Jain and Ajay Kumar Jain?
3. Whether the petitioner purchased the schedule property from Sri Ajit Kumar Jain as stated in the petition is true or not?
4. Whether there is a relationship between the petitioner and respondent?
5. Whether the respondent has committed a willful default in payment of monthly rents as alleged by the petitioner is correct or not?
6. Whether the denial of the title of the petitioner by the respondent is bonafide or malafide?
7. Whether the respondent had placed a prima facie evidence to prove that denial of title of the petitioner by him is bonafide, then it is incumbent on the part of this court to direct the landlady to approach the Civil Court to establish his title and seeking eviction of the tenant?
8. To what order?”

12. Before the Rent Controller, respondent examined PW1, who is her husband and got marked Exs.P1 to P9 on her behalf. Petitioner did not adduce either oral or documentary evidence.

13. By order dt.21.07.2015, the Rent Controller allowed the RC and directed the petitioner to vacate the RC schedule premises. He held that the respondent had purchased the RC schedule property from Ajit Kumar Jain. It also relied on Ex.P2 extract of ledger account in R.C.No.268 of 2001 dt.21.07.2009 and held that the petitioner was regularly

depositing rent to the credit of RC.No.368 of 2001 and the same were being claimed by Ajit Kumar Jain by filing cheque petitions up to 21.01.2008 and this showed the petitioner had accepted Ajit Kumar Jain as his landlord and owner of the RC schedule property. He took note of Ex.P3, sale deed dt.28.05.2009, and the subsequent Rectification Deed dt.18.11.2009(Ex.P4) and held that pursuant there to the respondent became the owner of the property having purchased it from Ajit Kumar Jain. It accepted the evidence of PW1 that respondent was the owner of the property and held that the said evidence was not refuted by the petitioner by entering into witness box and proving the documents filed by him. It observed that burden is on the petitioner to show that the property belongs to Government. It also took note of Ex.P5 to P8 which indicate that the vendor of the respondent Ajit Kumar Jain issued letter of Attornment of tenancy and that the same was received by the petitioner, but he did not respond by giving any reply notice to the respondent. It therefore held that denial of title by petitioner was malafide and there is willful default in payment of rent by the petitioner.

14. Assailing the same, petitioner filed RA.No.164 of 2015 before the Additional Chief Judge, City Small Causes Court, Hyderabad.

15. The said appeal was also dismissed on 07.03.2018 by the lower Appellate Court. It held that there is jural relationship of tenant and landlord between the petitioner and respondent having regard to Exs.P3 to P8, and that the denial of title of the respondent by the petitioner was mala fide. It observed that having accepted the vendor of the respondent as the owner in RC.No.368 of 2001, it is not open to the petitioner to claim any right or ownership over the RC schedule property by taking a 'U' turn. It observed that Attornment of Tenancy was brought by operation of law under Section 109 of the Transfer of Property Act, 1892 and it does not need consent of the tenant. It also considered the contents of Ex.P2 ledger in RC.No.368 of 2001 and held that there is a willful default in payment of rent by the petitioner.

16. Assailing the same, this Revision is filed.

17. Counsel for the petitioner, firstly, contended that the respondent did not enter the witness box and that her husband entered the witness box and so an adverse inference needs to be drawn against the respondent.

18. It is common knowledge that affairs of a female family members are usually taken care of by the male members of

the family and so adverse inference cannot be drawn against the respondent, particularly, when it is the evidence of PW1 that being the husband of the respondent, he was looking after her day-to-day affairs.

19. Counsel for the petitioner then pointed out to the non-filing of the income tax assessment of the respondent form 2009 to 2011.

20. I am unable to understand how this factor is a relevant circumstance when there is admittedly a Sale Deed in favour of the respondent executed by Ajit Kumar Jain.

21. Next, it is contended by the counsel for petitioner that there is no challenge to the Sale Deed, obtained by the petitioner from the State Government on 04.06.2009, by the respondent and therefore, the denial of title is bonafide.

22. Even petitioner did not enter the witness box and adduce evidence about the title of the State Government to the RC schedule property.

23. In my considered opinion, this plea is without any merit because it is necessary for the respondent to challenge the Sale Deed specifically in a suit only if the respondent is a party to the document but not otherwise; and so the

respondent can as well ignore the document and proceed basing on the material available on record to show the existence of landlord-tenant relationship between the parties.

24. Lastly, he contended that there is no evidence of Attornment of Tenancy and so there is no landlord-tenant relationship between the respondent and the petitioner.

25. As rightly held by the Appellate Authority, under Section 109 of the Transfer of Property Act, 1892, Attornment of Tenancy by transfer of title to the leased property is automatic and does not need consent of the tenant. In the instant case, after purchase by the respondent, admittedly Ex.P5 letter dt.20.07.2009 was addressed by the vendor of the respondent to the petitioner informing about the sale of the mulgi in occupation of the petitioner to the respondent. Therefore, petitioner cannot claim to be ignorant of the same.

26. I therefore hold that both the Courts have rightly drawn adverse inference against the petitioner.

27. Accordingly, this Civil Revision Petition is dismissed. However, petitioner is granted time till 31.07.2019 to vacate the premises subject to the petitioner depositing all the arrears of rent till date on or before 30.04.2019 and continue to deposit the rent payable @ Rs.550/- per month up to

31.07.2019 on or before 5th of every succeeding month to the credit of the RC No.150 of 2010 before the Principal Rent Controller-cum-XII Junior Civil Judge, Hyderabad. Petitioner shall also file an undertaking before this Court within two (02) weeks from the date of receipt of a copy of this order undertaking to pay the above amounts as well as undertaking to vacate the RC schedule property by 31.07.2019. In default of compliance with any of the above directions, petitioner is liable to be evicted forthwith. No order as to costs.

28. Consequently, miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

28th March, 2019.

Note: Issue CC in one week.

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