

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.2773 of 2019

ORDER:

This civil revision petition is filed by the petitioner herein/tenant under Section 22 of the A. P Building (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act"), aggrieved by the judgment dated 24.09.2019 passed in R.C.A.No.16 of 2017 by the learned Additional Chief Judge, City Small Causes Court, at Hyderabad, whereby, R.C.A.No.16 of 2017, filed by the petitioner herein/tenant against the order dated 30.12.2016 passed in R.C.No.44 of 2012, by the Principal Rent Controller, City Small Causes Court, Hyderabad, was partly allowed.

2. The revision petitioner herein is the tenant and the respondents herein are the landlords. For the sake of convenience, hereinafter, the parties are referred to as petitioner/tenant and the respondents/landlords.

3. Heard Sri Aadesh Varma, learned counsel for the petitioner/tenant, Sri M. Basith Ali Yavar, learned counsel for the respondents/landlords and perused the record.

4. Learned counsel for the revision petitioner/tenant would contend that findings of both the Courts below are perverse. Both the Courts below erroneously held that there was jural relationship in between the parties to the litigation. The petitioner/tenant was depositing the rents in Court in terms of order dated 31.07.2012 passed in R.C.No.489 of 2011 by the IV Additional Rent Controller, Hyderabad. So there is no

commission of default in payment of rent and the finding to that effect by both the Courts below, is erroneous. When there is a serious dispute with regard to the title of the respondents/landlords, it should be adjudicated by the competent civil court. Since the R.C.No.489/2011 filed by the petitioner/tenant was allowed in his favour, the Courts below ought not have passed the impugned eviction orders against him. It is contended that the respondents are not the owners and they are proclaiming to be the owners but the original owner is Mohd. Younus S/o. Late Mohd. Yousuf. In support of his contention, learned counsel relied upon the decisions reported in *Rajendra Tiwary v. Basudeo Prasad and another*¹ & *K.P.Janakiram vs. K.Suguna Bai*² and ultimately prayed to allow the revision petitions as prayed for.

5. On the other hand, learned counsel for the respondents/landlords contended that the contentions raised by the petitioner/tenant were elaborately dealt with and answered by both the Courts below. There is ample material on record to show that the original owner i.e, Mohd. Younus @ Mohd. Yousuf, had alienated the subject premises in favour of the respondents/landlords under registered sale deed dated 25.11.2010 and the vendor of the respondents/landlords attorned the tenancy in favour of the respondents/landlords. In spite of sending legal notice by the respondents/landlords, the petitioner/tenant failed to pay the rents and committed wilful default. The first appellate Court was justified in passing the impugned judgment by

¹ AIR 2002 Supreme Court 136

² 1995 (2) ALT 61

confirming the eviction order passed by the learned Rent Controller and ultimately, prayed to dismiss the revision petition.

6. In view of the submissions made by both sides, the point that arises for determination is:

“Whether the impugned judgment dated 24.09.2019 passed in R.C.A.No.16 of 2017 by the learned Additional Chief Judge, City Small Causes Court, at Hyderabad, is liable to be set aside?”

7. POINT: Admittedly, the order dated 31.07.2012 passed in R.C.No.489 of 2011 by the IV Additional Rent Controller, Hyderabad, is an *ex parte* order. There is ample evidence on record to show that Mohd.Younus @ Mohd. Yousuf, alienated the subject premises in favour of the respondents/landlords under registered sale deed dated 25.11.2010. The petitioner/tenant admitted in his cross-examination that he knows Mohd.Younus, the vendor of the respondents/landlords and he identified the photographs of the said Mohd. Younus, which were marked as Exs.P.1 and P.2. Further, the petitioner/tenant also admitted in his cross-examination that the petition schedule property was purchased by the respondents/landlords from one Mohd. Younus, in the year 2010. There is also admission by the revision petitioner/tenant that he was issued legal notice by the respondents/landlords, prior to the filing of the application seeking eviction and even after receipt of notice from the respondents/landlords, the petitioner/tenant has not tendered the rents. Further, there is denial of title of the respondents/

landlords by the petitioner/tenant and the same is substantiated by leading cogent and convincing evidence. It is also one of the ground to pass the impugned eviction order. The question relating to jural relationship in between the parties to the litigation was held in favour of the respondents/landlords, basing on the evidence on record. Admittedly, no rent was paid by the revision petitioner/tenant to the respondents/landlords. So there is wilful default in paying rents and this aspect was determined in favour of the respondents/landlords and against the petitioner/tenant. The other finding with regard to the bonafide requirement of the subject premises by the respondents/landlords was also held in favour of the respondents/landlords by the learned Rent Controller.

8. In *Rajendra Tiwary's* case (1 supra), relied upon by the learned counsel for the petitioner/tenant, the Hon'ble Apex Court held as follows:

“Para 16: In this case the reason for denial of the relief to the plaintiffs by the trial court and the appellate court is that the very foundation of the suit, namely, the plaintiffs are the landlords and the defendant is the tenant, has been concurrently found to be not established. In any event inquiry into title of the plaintiffs is beyond the scope of the court exercising jurisdiction under the Act. That being the position the impugned order of the High Court remanding the case to the first appellate court for recording finding on the question of title of the parties, is unwarranted and unsustainable. Further, as pointed out above, in such a case the provisions of Order VII Rule 7 are not attracted. For these reasons the aforementioned cases are of no assistance to the defendant. In this view of the matter we cannot but hold that the High Court erred in remanding the case to the first appellate court for determination of the title of the parties to the suit premises and for granting the decree under Order VII Rule 7.”

In the instant case, the findings with regard to jural relationship between the petitioner/tenant and the respondents/landlords

and also denial of title of the respondents/landlords by the petitioner/tenant, have been concurrently held by both the Courts below in favour of the respondents/landlords. Therefore, the facts and circumstances of the above cited decision is quite distinguishable from the facts and circumstances of the case on hand and no reliance can be placed over the said decision.

9. In *K.P.Janakiram's* case (2 supra), relied upon by the learned counsel for the petitioner/tenant, the erstwhile High Court of Andhra Pradesh, held as follows:

“Para 15: From the above material, it is clear that there is no clinching evidence on the part of the landlord to establish that the present petitioner was tenant under her. The Courts below did not advert to this aspect at all even though in the reply notice and also in the counter, the tenant specifically stated that there was no relationship of landlord and tenant between them. Having regard to this specific stand taken by the petitioner-tenant, that he was not a tenant regarding the premises in question, the first question that the Courts below should have decided was, whether there was such a jural relationship of landlord and tenant between the parties. On the other hand, they raised a point, whether the denial of title by the tenant was bona fide, presuming that the petitioner had admitted to be the tenant under the respondent-landlord. Under the proviso to Section 10 of the Rent Control Act, it is specifically provided that whenever a tenant denies title of the landlord, if such a denial was bona fide, it was incumbent on the part of the Rent Controller to direct the landlord to approach the Civil Court to establish her title and seek eviction of the tenant.”

In the instant case, the evidence on record clearly establishes that a false defence is setup by the petitioner/tenant that vendor of the respondents/landlords, is not the owner of the petition schedule property. Therefore, the above cited decision is not helpful to the case of the petitioner/tenant.

10. It is relevant to state that the supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution

of India is limited to see that a Court or Tribunal subordinate to it functions “within the bounds of their authority” and to ensure that law is followed by such Court or Tribunal by exercising jurisdiction vested in them and not declining to exercise the jurisdiction which is vested in them. In the instant case, both the Courts below have discussed the material on record at length and concurrently ordered for eviction of the subject premises on the ground of wilful default in payment of monthly rents by the petitioner/tenant and also denial of title of the respondents/ landlords by the petitioner/tenant. There is nothing to take a different view. All the submissions made on behalf of the revision petitioner/tenant do not merit consideration. Both the Courts below have rightly exercised the jurisdiction vested in them. No perversity or illegality is found in the impugned judgment. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

11. Accordingly, this Civil Revision Petition is dismissed. No costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Date: 29.11.2019
scs

Dr. SHAMEEM AKTHER, J