

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.5977 of 2018

ORDER:

Heard both sides.

2. This Revision is filed assailing the order dt.17.09.2018 in I.A. No.74 of 2018 in R.C. No.391 of 2009 of II Additional Rent Controller, Hyderabad refusing to implead the petitioner as petitioner No.2 in R.C. No.391 of 2009.

3. The said R.C. was filed by the 1st respondent against the 2nd respondent seeking eviction of the respondent on the ground of wilful default in payment of rent.

4. The 2nd respondent disputed the existence of jural relationship of landlord and tenant between 1st respondent and himself and also questioned the ownership of the 1st respondent over the R.C. schedule property.

5. Pending the said R.C, admittedly the R.C. schedule property was gifted under a registered gift deed dt.05.03.2013 by 1st respondent to petitioner who is his son. The petitioner, therefore, sought to come on record. The 1st respondent did not oppose to the said impleadment.

6. The 2nd respondent, however, filed a counter contending that the very execution of the gift settlement is contrary to an order of injunction said to have been granted on 22.01.2010 in I.A. No.138 of 2010 in O.S. No.25 of 2010 passed by the XIII Additional Chief Judge, City Civil Court, Hyderabad. He also contended that the said court had refused to vacate the said order, and in disobedience of the said order this gift deed has been executed by the 1st respondent in favour of the petitioner.

7. By order dt.27.09.2018, the Court below dismissed the said application. It held that a third party raising disputed questions of title is not entitled to impleaded in Rent Control proceedings. It referred to the decision of Division bench of this Court in **Soni @ Bhuthulasi v. Kunda Nageswara Rao**¹ and also the decision of the learned single judge in **S. Saraswati v. Y. Laxminarayana**².

8. In **Soni** (1 supra), while observing that question of title would be the question which the third party seeking impleadment would normally raise which needs to be gone into a civil Court and that could be a reason for denying him for an impleadment for an eviction case before the Rent Controller, the Division bench, however, stated in para 15 as under:

“We would, however, like to state that it is not as if Order 1, Rule 10 C.P.C. would never be attracted to

¹ 1991 (3) ALT 200

² 2004 (6) ALD 161

proceedings before the Rent Controller. A legatee or a purchaser or other person or a sub-tenant or any other person can always get impleaded so long as he is not raising any dispute of title or so long as his title is not disputed. Similarly, if the landlord and the tenant agree for the third party being impleaded and if no question of title needs to be decide, the application under Order 1, Rule 10 C.P.C. can be allowed. It is only where a disputed question of title is raised or has to be decided at the instance of the third party that it can be said that the scheme of the Act does not permit such impleading.”

9. In the instant case, there is no dispute about the title as between the 1st respondent and the petitioner, though the 2nd respondent has questioned the title of the 1st respondent and is probably also now questioning the title of the petitioner.

10. As held by the Division Bench in **Soni** (1 supra) in para 15, if a legatee or a purchaser or other person or a sub-tenant can get impleaded so long as he was not raising any dispute of title or so long as his title is not disputed, there is nothing wrong in the petitioner getting impleaded. This, however, does not mean that the 2nd respondent cannot dispute the title of the 1st respondent or the transfer of the title by the 1st respondent to the petitioner and that issue would still survive for determination in the case.

11. In the circumstances, I am of the opinion that the Court below erred in not impleading the petitioner as the 2nd petitioner in R.C. No.391 of 2009.

12. Accordingly, the Civil Revision Petition is allowed; order dt.17.09.2018 in I.A. No. 74 of 2018 in R.C. No.391 of 2009 of II Additional Rent Controller, Hyderabad is set aside; the said I.A. is allowed.

13. The miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 22.08.2019

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