

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

WEDNESDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR

**PRESENT
THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU**

CIVIL REVISION PETITION No: 5545 OF 2012

Petition under Article 22 of AP Buildings (Lease, Rent and Eviction) Control Act of 1960 against the order dated 15.12.2011 made in RA No. 366/2010 passed by the Learned Additional Chief Judge, City Small Causes Court, CCC, Hyderabad, confirming the Order dt.03.09.2010 in RC No. 97 of 2009.

Between:

1. S. Satyanarayana, S/o Late S.Rajaiah, Occu Business, R/o Flat No.503, Jagannadh Residency, StNo.6, Vidyanagar, Hyderabad.
2. O.Anitha W/o OHM Thirumurthy aged 51 years, R/o Plot No.40, East Anandbagh, Medchal Malkajgiri District
3. Deepanjali Dugini W/o Ashok Dugini, Aged 49 years, R/o 6596 S QUEMOY Way, Aurora Colorado, USA 800016
4. Dr. Naresh Kumar S/o late S. Satyanarayana aged 47 years, R/o H.No.8-5/87, Swamy Ayyappa Colony, Phase -II, Dammaiguda Nagaram, Keesara, R.R.District
5. S. Sareen Kumar S/o Late S. Satyanarayana, aged 46 years R/o Flat No.103, Windor Apartment, Opp Pillar No.32, New Boiduga, Secunderabad

(Petitioners 2 to 5 are brought on record as LR's of the deceased sole petitioner as per C.O.dated 17.03.2023 in IA No.2 of 2023)

...Petitioners/Appellant/Revision (Lord Lord)

AND

1. A.I. Deva Dass, S/o A.R.Issaac, Occu Business, R/o In portion of H.No. 1-9-498/2, Ramnagar, Musheerabad, Hyderabad.
2. Smt Racheal, W/o Vasanth, Occu Private Employee, R/o In portion of H.No. 1-9-498/2, Ramnagar, Musheerabad, Hyderabad.
3. Vasanth, S/o Not known to petitioner (died), Occu Business of Electrical Shop R/o In portion of H.NO. 1-949/B/2, Ramnagar, Musheerabad, Hyderabad.

(R-2 being rep. as LR of R-3 as per C.O. dated 17.03.2023 in I.A.No.1/2016 (CRPMP No.1169 of 2016))

...Respondents

Counsel for the Petitioners: SRI BANKATLAL MANDHANI

Counsel for the Respondents: SRI R. SATYANARAYANA REDDY

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CRP.NO.5545 OF 2012

COMMON JUDGMENT:

Being aggrieved by the order dated 15-12-2011 in RA.No.366 of 2010 on the file of Additional Chief Judge, City Small Causes Court, Hyderabad, where under, his appeal filed against the order in RC.No.97 of 2009 on the file of Principal Rent Controller Cum XII Junior Civil Judge, Hyderabad was dismissed confirming the order of trial Court in RC.No.97 of 2009, the petitioner in the original Rent Control case has filed this Civil Revision Petition under Section 22 of Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short 'the Act') and sought for setting aside the impugned judgment and for eviction of the respondents from the petition schedule premises.

2. Before advertng to the grounds on which this revision is filed, a perusal of the impugned order and other record including the judgment in RC.No.97 of 2009 would show that the petitioner herein has filed RC.No.97 of 2009 before the trial Court under Section 10(2)(i), 10(2)(ii) and

Section 10(2)(iii) of the Rent Control Act for eviction of the respondents from the schedule premises. As per the petition filed by the petitioner before the trial Court, it was his case that the 1st respondent was his tenant of the premises shown in the petition schedule on a monthly rent of Rs.1,400/- exclusive of electricity and water charges. The petitioner while filing the said R.C. has claimed that one Mr.S.Babu Rao has filed a suit in OS.No.4639 of 1995 against the 1st respondent for recovery of possession of the suit schedule property. The 1st respondent while filing written statement in the said suit admitted that he was paying rent to the petitioner herein and during his evidence as DW.1 in the said suit, he has admitted that he was paying rent to the present petitioner. Subsequently, the suit filed by Babu Rao was not pressed on 30-08-1999, thereby, the suit was dismissed. Therefore, the petitioner by relying on the admission of respondent No.1 referred above, sought to claim that the 1st respondent was his tenant of the premises and also by alleging that he fell in arrears of rent from January 1999, failed to pay the same in spite of his promise to clear the arrears of rent.

3. The petitioner has claimed that the tenancy between him and respondent No.1 was oral and as per the terms, the first respondent was liable to pay rent by sixth of every month in advance. There was practice of issuing katcha receipts on white paper. The petitioner further claimed before the trial Court that respondent No.1 has paid rent up to December, 1990, but subsequently, failed to pay the rent and when he demanded the 1st respondent to clear the rent for 123 months from January 1999, till January 2009, there was a promise by respondent No.1 for payment of the rent, but with a malafide intention he postponed the payment, thereby, the petitioner sought for eviction of the 1st respondent from the property on the ground of willful default in payment of rent.

4. The petitioner has also claimed before the trial Court that he came to know that respondent No.1 without obtaining his consent sub-let the property shown in Green colour (a portion of the suit schedule property to respondent No.2) who is no other than his married daughter and he has sub-let the other portion shown in Yellow colour to respondent No.3, who is his son-in-law. The petitioner claimed that the

1st respondent sub-let a portion each from the petition schedule property to respondents No.2 and 3. In addition to this, the petitioner has contended that the 1st respondent committed acts of waste and damaged the property by illegal construction of water sump, opened a door from the electrical shop to the inner room, thereby, on these grounds the petitioner sought for eviction of the 1st respondent from the petition schedule property.

5. The first respondent opposed the claim, disputed the alleged tenancy with the petitioner. Respondent No.1 has admitted the suit filed by the Babu Rao vide OS.No.4639 of 1995 further contended that subsequently there was a compromise between himself and Babu Rao. As per the compromise, he agreed to purchase the property, thereby, paid substantial amount of Rs.4,50,000/- through Bank cheques and after verifying the decree in OS.No.2 of 1986 in a partition suit in favour of Babu Rao that he has purchased the property from the original owner, therefore, according to respondent No.1, he was residing in the premises as an agreement holder but not as a tenant, petitioner is nothing to

do with the property, thereby, sought for dismissal of the petition.

6. The 1st respondent has denied the alleged sub-lease, waste of property etc., further contended that the petitioner has no locus standi to file the Rent Control case and prayed for dismissal of the case. During enquiry, the petitioner herein was examined as PW.1 and the 1st respondent was examined as RW.1. Both the parties have produced Exs.P1 to P8 and Exs.R1 to R16. The trial Court having appreciated the pleadings and evidence, came to the conclusion that the petitioner has no right over the petition schedule property. He cannot claim the eviction of the respondent and dismissed the petition by judgment dated 03-09-2010. Being aggrieved by the said judgment, the petitioner has filed an appeal before the Additional Chief Judge, City Small Causes Court vide RA.No.366 of 2010 on various grounds. The first appellate Court appreciated the contentions of the parties, by formulating appropriate points for consideration, dismissed the petitioner under impugned judgment dated 15-09-2011.

7. Being aggrieved by the said judgment, where under, his contentions were negated by the first appellate Court by confirming the judgment of the trial Court, the petitioner in the original RC has filed this Civil Revision Petition on the following grounds:

8. The impugned order is contrary to law, facts and evidence. The findings of the first appellate Court that there is no jural relationship of landlord and tenant between the petitioner and the 1st respondent is illegal, against to the evidence. The findings of the first appellate Court that the denial of jural relationship by the respondents is bonafide and parties have to approach the Civil Court is illegal and contrary to the evidence on record. The finding of the Courts below regarding the jural relationship is based on surmises, conjectures amounting to making out a case, not pleaded by the 1st respondent. Both the Courts failed to appreciate that the respondents in their counter did not deny the factum of payment of rent to the revision petitioner. It is an admitted fact that even after the death of his mother, the 1st respondent paid rent to the petitioner, the Courts below failed to appreciate that the 1st respondent admitted payment

of rent to the revision petitioner, thereby, came to an incorrect conclusion. He has also claimed that the finding of the Courts below to the effect that petitioner is not landlord in view of his plea of adoption is illegal and arbitrary and more particularly, when the same are held as false and not proved. The petitioner has contended that in the absence of any explanation by the respondent, the findings of the trial Court and the first appellate Court that Exs.P2 and P3 cannot be relied on by the petitioner to prove the relationship is illegal and contrary. He has questioned the findings of the trial Court and first appellate Court that the said S.Babu Rao ought to have been joined as a party to the proceedings when there was no plea of non-joinder as illegal, thereby, the same is incorrect and amounts to miscarriage of justice. Therefore, the petitioner sought for setting aside the impugned judgment and prayed for eviction of the respondents from the schedule property.

9. The following points arose for consideration in this

Revision Petition :

1. Whether the trial Court and 1st appellate Court failed to appreciate the contention of petitioner properly?

2. Whether the petitioner was able to prove the Jural relationship between himself and respondent No.1, and the alleged willfull default in payment of rent by respondent No.1?
3. Whether the petitioner's claim for eviction of respondent No.1 was not properly appreciated by the trial Court and 1st appellate Court?

10. This Revision Petition has been filed against the concurrent finding of the trial Court and appellate Court in a Rent Control case, where under, the petitioners request for eviction of the alleged tenants from the petition schedule property has been negatived. While filing the Rent Control case, the petitioner wants to rely on the alleged admissions of his ownership over the property. According to the case filed before the Rent Control Court, the petitioner has contended that he is the owner of the property shown in the petition schedule. The petitioner has claimed that when one S.Babu Rao has filed a suit in OS.No.4639 of 1995 against the 1st respondent for recovery of possession, respondent No.1 has filed a written statement with an admission that he is paying rent to the petitioner herein. Therefore, such an admission amounts to acceptance of his ownership over the schedule property, thereby, on that ground, the petitioner sought for eviction of the respondents. The petitioner has

claimed before the Rent Control Court that the respondents, who were in possession of the property as tenants are liable to vacate the premises on the ground of willful default in payment of rent. However, the respondents have disputed the material averments made by the petitioner in the Rent Control case, they have denied the ownership of petitioner itself on the property.

11. According to their further claim before the Rent Controller, OS.No.4639 of 1995 which was filed by Babu Rao for recovery of possession was ended in compromise as per which the 1st respondent agreed to purchase the property, after verifying the partition decree between Babu Rao and other family members in OS.No.2 of 1986, having satisfied the said Babu Rao became owner of the property, the 1st respondent could purchase the property from the original owner. Respondent No.1 has paid substantial amount through Bank cheques. He has been residing in the property as an agreement holder but not as a tenant. The respondents have also claimed that the petitioner is nothing to do with the property.

12. Therefore, the contentions raised by the respondents before the Rent Control Court are very clear that they have been in possession of the property as owners but not as tenants. From the evidence adduced by both parties, it also appears that there was a dispute between the petitioner herein and his brother Babu Rao and subsequently, the partition suit filed by the said babu Rao has been decreed. It also appears from the record that when Babu Rao filed a suit seeking eviction of the respondents, there might have been a written statement filed by respondent No.1 stating that he was paying rent in favour of the petitioner. But the entire record clearly indicates that the petitioners herein were collecting rent on behalf of his mother but not as an owner. The petitioner by taking advantage of a sentence in the written statement, which shows that the 1st respondent was paying rent to the petitioner, wants to get the property evicted by ignoring the other facts including the decree that was passed in favour of Babu Rao and the agreement of sale under which the respondents got title and possession. It is the specific case of respondent No.1 that he has verified the title of Babu Rao based on decree in OS.No.2 of 1986 and

purchased the property and transferred substantial amount through Bank cheques.

13. Therefore, simply because there is an averment in the written statement filed by respondent No.1 that he was paying rent to the petitioner is not a conclusive proof of ownership of the petitioner nor it would establish the landlord and tenant relationship between the petitioner and respondents. The Rent Controller having examined all these aspects and after appreciating the evidence categorically held that there was no jural relationship between the petitioner and respondents.

14. Therefore, the question of default in payment of rent does not arise. Consequently, the contentions of the petitioner that respondent No.1. Sub-let portions of the property in favour of his daughter and son-in-law cannot be accepted. The learned counsel for the petitioner herein sought to rely on judgment between '**Shashi Raj Vs. Durga Bai¹**' and '**Kareem Hussain (died) by L.Rs. Vs. Veeranki Rama Krishna Prasad (died) by L.Rs.²**', **H.K.Sharma Vs.**

¹ 2019 SCC Online TS 3618

² 2007 2 ALD 808

***Ramlal*³ and *'Kasthuri Radhakrishnan and Others Vs. Chinniyan and Another*⁴.**

15. In the judgment '*Shashi Raj Vs. Durga Bai*' referred above, this Court made an observation that when the terms of the agreement between the landlord and tenant did not indicate what would be the fate of the tenancy after the execution of the agreement of sale that is there was no intention of the parties to surrender the tenancy. It was held that there would not be a determination of the lease under Section 111 of Transfer of Property Act (in short 'T.P.Act') by mere execution of such agreement. There has to be specific intention in the agreement that the parties intended the tenants in whose favour the agreement was executed to surrender their tenancy rights on execution of the agreement of sale and bring to an end their jural relationship of landlord and tenant.

16. In the other judgment between '*Kareem Hussain and another*' referred above, this Court made an observation that failure to produce agreement of sale or any documentary evidence, registered deed executed by the original owner

³ (2019) 4 SCC 153

⁴ (2016) 3 SCC 296

bequeathing the property in favour of vendor of landlord, registered sale deed in favour of landlord for valid consideration though subject to result of suit for specific performance filed by tenant, it cannot be said that title is not at all passed on to landlord. The tenant without filing the agreement of sale, cannot claim right on the property.

17. The petitioner sought to rely on the other judgments only to show that the respondents herein were not able to prove the alleged purchase of the property under agreement of sale. Therefore, they cannot claim title on the property and as such, in view of their admission in the other proceedings, the tenancy has to be accepted and is liable to be evicted.

18. However, even as per the contentions raised by the petitioner itself, except relying on the averments made in the written statement filed in OS.No.4639 of 1995, the petitioner could not produce any proof of his ownership over the schedule mentioned property. The petitioner did not dispute the decree in OS.No.2 of 1986 that is a partition suit filed by his own brother. According to the contentions raised by the petitioner, the scheduled mentioned property was

purchased by his father Rajaiah and after his death, the property devolved upon his mother Smt. Laxmamma, his brother Babu Rao and petitioner. It is also his case before the Rent Controller that his mother leased out the schedule mentioned property to the 1st respondent. The petitioner sought to rely on a judgment in OS.No.164 of 1976 wherein, his father was shown as a 3rd defendant and his mother Laxmamma and his brother Babu Rao and petitioner has been shown as defendants No.26 to 28.

19. The petitioner has claimed that he was forced to take the plea of adoption at the instance of his relatives while contesting OS.No.164 of 1976. However, the said plea was not accepted by the Court which tried OS.No.164 of 1976. Therefore, such a plea was merged in the findings at Para No.15 of judgment in OS.No.164 of 1976. However, the petitioner himself has claimed that his mother Laxmamma inducted the 1st respondent to the scheduled mentioned property as her tenant. It may be true that the petitioner herein has received the rent from 1st respondent, but it was only on behalf of his mother.

20. In order to claim eviction of the respondents from the schedule mentioned property, the petitioner must be in a position to prove the jural relationship of landlord and tenant between himself and the 1st respondent. Admittedly, the mother of petitioner namely Laxmamma inducted the 1st respondent into the property. Therefore, unless the petitioner is able to show his title on the property, simply because there was an averment in the written statement filed by respondent No.1 in another proceeding, he cannot claim title or status of landlord over the property. As rightly observed by the Courts below, the petitioner without disclosing source of his title on the property, sought the eviction of respondents.

21. There was an admission by the petitioner about his brother filing a suit for partition vide OS.No.2 of 1986 which was decreed in favour of Babu Rao and in pursuance of the decree, the property was divided into two shares. Therefore, the petitioner cannot claim right on the property simply because prior to the decree in OS.No.2 of 1986, there was an admission by the 1st respondent that he was paying rent to the petitioner. It is his own admission before the Courts below that he was given in adoption and there was a

decree in OS.No.2 of 1986 which stares him. As could be seen from the record, it appears that the petitioner while contesting the suit vide OS.No.164 of 1976 had admitted that he was given in adoption to one Narasimha, who is no other than the elder brother of his father Rajaiah. Therefore, except the written statement filed by 1st respondent in another suit, there is no other proof that the petitioner succeeded the suit schedule property, and he cannot ignore the decree in OS.No.2 of 1986.

22. The Rent Controller as well as the appellate Court having analyzed the evidence and after a thorough discussion of all the material documents rightly held that the petitioner herein cannot be identified or recognized as landlord of the petition schedule property. There was no jural relationship between the petitioner and respondent No.1, as such, the question of willful default in payment of rent does not arise. Since the petitioner has filed the Rent Control case for eviction of the alleged tenant, he cannot depend on the contentions or weaknesses, if any in the case of respondent No.1. Even if it is assumed that the 1st respondent was not able to prove the alleged agreement of sale by which he is

claiming title on the property still the petitioner is not entitled to seek the eviction of the respondents.

23. The petitioner himself was not able to prove his contentions including the right or his status as a landlord, therefore, the Rent Controller as well as the first appellate Court rightly held that the petitioner is not entitled to the relief sought for in the original Rent Control case. Therefore, there are no grounds to interfere with the concurrent finding that he challenged in the present Revision Petition. Therefore, the petitions are liable to be dismissed.

24. In the result, CRP.No.5545 of 2012 is dismissed.

Consequently, Miscellaneous applications if any, are closed. No costs.

Sd/- K. AMMAJI
ASSISTANT REGISTRAR


SECTION OFFICER

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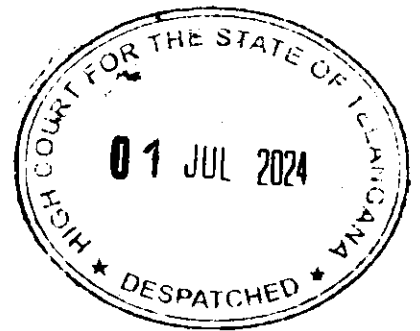
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HIGH COURT

DATED:28/02/2024

**ORDER
CRP.No.5545 of 2012**



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