

G. David @ Devaiah Vs. Saramma and ors.

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Court : Andhra Pradesh

Decided On : Nov-16-1992

Reported in : 1993(1)ALT451

Judge : V. Neeladri Rao, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 10, 10(1), 10(2), 11, 11(1), 11(4) and 22

Appeal No. : Civil Revision Petition No. 1419 of 1992

Appellant : G. David @ Devaiah

Respondent : Saramma and ors.

Advocate for Def. : D. Ramalingaswamy, Adv.

Advocate for Pet/Ap. : G. Anjappa, Adv.

Disposition : Petition allowed

Judgement :

ORDER

V. Neeladri Rao, J.

1. All these revision petitions are directed against the orders of the Chief Judge, City Small Causes Court, Hyderabad in R.A.Nos. 363,350,366,365,367 and 364 of

1991 respectively. All these revision petitions are disposed of by a common order as they are against the common judgment and as the same points are involved.

2. The facts which give rise to these proceedings are briefly as under. The respondents in all the eviction petitions were the tenants of late Shantamma, the original owner of the premises, the various portions of which were let out by her to these tenants. The petitioner, who is the revision petitioner in all these revision petitions, filed the eviction petitions against these respondents on the ground of wilful default in payment of rent. The contention for the eviction petitioner is that he purchased this premises from late Shanthamma under registered sale deed dated 5-5-1980 and all these six tenants attorned to him orally. Smt. Vimalamma, the respondent in R.C.Nos. 962 and 964 of 1988 claimed that her mother, the original owner of this premises, executed a registered gift deed in her favour on 31-1-1986 and she is the absolute owner of the entire premises. Sri Suresh, who is the respondent in R.C. No. 961 /88 stated that he vacated the portion for which the said R.C. number was filed even by the time the said eviction petition was filed against him. Sri Shankar, the respondent in R.C.No. 963 of 1988, admitted that he paid rent to the revision petitioner for three months i.e., November, December, 1983 and January 1984 as per the counter-foils Exs.P-15 to P.17. M/s. Vimalamma, Pentamma and Saramma, the respondents in other eviction petitions, pleaded that they never attorned to the revision petitioner and that the latter had no title in regard to the plaint schedule property. They also pleaded that the revision petitioner had not taken any steps during the life time of Santhamma, who died on 15-8-1987, except the issual of legal notice as per Ex.P-11 in September, 1983. During the pendency of the eviction petitions, the revision petitioner filed applications under Section 11 of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act (for short 'Rent Control Act') praying for a direction to the various respondents to deposit the arrears of rent, failing which he should be put in possession of portions covered by the various eviction petitions. Both the learned Rent Controller and the Appellate authority held that the revision petitioner had title to this premises, but the I.As. and appeals thereon were dismissed by holding that there was no attornment by the respondents. The said orders are challenged in these revision petitions.

3. It is not in dispute that the respondents in various eviction petitions were inducted into the respective portions as tenants by late Shanthamma. They could not have a right to question the title of Shanthamma as Section 116 of the Evidence Act which incorporated the principle of estoppel debars them from challenging the title of Shanthamma. But the revision petitioner filed eviction petitions by alleging that he purchased this premises from Shantamma, the original owner under registered sale deed dated 5-5-1980 and on the same day all the respondents attorned to him as tenants and he also issued notice as per Ex.P-11 in September 1983 to these respondents and except Sri Shankar, the others did not pay him rent and Sri Shankar paid rent to him for only-November, December, 1983 and January 1984 and thus all these respondents are liable to be evicted for wilful default in payment of rent. He also filed applications under Section 11 of the Rent Control Act. As already observed, both the learned Rent Controller and the Appellate authority negatived the plea of the revision petitioner in regard to attornment, though held in favour of the petitioner in regard to the title and accordingly dismissed the I.As. and Appeals respectively.

4. While the contention for the revision petitioner is that when the tenants claimed the statutory right of tenancy, there need not be specific attornment by the tenants to the purchaser from the landlord, and when the learned Rent Controller and the Appellate authority believed the version of the petitioner in regard to his purchase and thus he is the landlord, there was no justification for dismissing the I.As. filed under Section 11 of the Rent Control Act, or the appeals against the orders of dismissal therein.

5. The learned counsel for the respondents in these revision petitions submitted that when they pleaded that the revision petitioner had no title for this premises and thus there was no relationship of landlord and tenant between them, it is necessary for the learned Rent Controller to consider whether the said denial is bona fide, the eviction petitions have to be dismissed and the remedy of the revision petitioner is only to file suits as contemplated under Section 10(1) proviso of the Rent Control Act and it is not open to the Rent Controller or the Appellate authority to decide about the title, when it was pleaded for the respondents in the eviction petitions that the eviction petitioner had no title for the premises in

question.

6. It will be convenient to read Section 10(1), 10(2)(vi) and Section 11 of the Rent Control Act before adverting to the respective contentions and they are as under:

'10(1). A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this Section or Sections 12 and 13:

Provided that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

10(2). A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied-

(i) xxxxxxxx

(ii) xxxxxxxx

(iii) xxxxxxxx

(iv) xxxxxxxx

(v) xxxxxxxx

(vi) that the tenant has denied the title of the landlord or claimed a right of permanent tenancy and that such denial or claim was not bona fide, the Controller shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application. 11 (1). No tenant against whom an application for eviction has been made by a landlord under Section 10 shall be entitled to contest the application before the Controller under that section, or to prefer any appeal under

Section 20 against any order made by the Controller on the application, unless he has paid to the landlord, or deposits with the Controller or the appellate authority, as the case may be, all arrears of rent due in respect of the building, until the termination of the proceedings before the Controller or the Appellate authority, as the case may be.'

(2) to (5) xxxxxxxx'

It is evident from the proviso to Section 10(1) of the Rent Control Act that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide. If the Controller records a finding to the effect that the said denial or claim is bona fide, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the said Court shall pass a decree for eviction on any of the grounds mentioned in the various provisions of the Rent Control Act. Section 10(2)(vi) of the Rent Control Act lays down that if the tenant denies the title of the landlord or claims a right of permanent tenancy and if such denial or claim is not bonafide, the eviction can be ordered per se on the ground. Hence, if the Controller records a finding that the denial of title or claim of permanent tenancy is not bona fide, the eviction can be ordered on that ground alone. Division Bench of this Court held in *Soni @ Bhuthulasi and Ors. v. Kunda Nageswara Rao and Anr.* : 1991(3)ALT200 that where a disputed question of title is raised or has to be decided at the instance of the third party, the scheme of the Rent Control Act does not permit his impleading in rent control proceedings. The said conclusion was arrived at by considering the scope of proviso to Section 10(1) of the Rent Control Act. While analysing the scope of proviso to Section 10(1) and after referring to Section 10(2)(vi) of the Rent Control Act, it was observed as under in para 7 at page 203 of the Judgment:

'It is, therefore, clear that, in the Court of the Rent Controller, where the landlord applies for eviction, the only question that the Rent Controller is competent to decide is whether the denial or claim of the landlords's title by the tenant, if any, is bona fide or not. If it is bona fide, the landlord can sue in the civil court for eviction on one or other of the grounds mentioned in Sections 10,12 or 13 of the Act. If it is not bona fide, the landlord can get eviction before the Rent Controller inasmuch as

such a denial or claim of a tenant as regards the landlord's title, if it is not bona fide, permits eviction to be ordered by the Controller. In our view, the above provisions in the proviso to Section 10(1) read with Section 10(2)(vi) clearly indicate that even when a tenant, who is a party to the eviction proceeding raises a dispute or claim as to the title of the landlord, the Rent Controller has no jurisdiction to decide whether the landlord has title to the property or not. The limited jurisdiction that is conferred by the Act on the Controller is to decide whether the denial or claim by the tenant is bona fide or not.'

Thus, the Division Bench of this Court had taken the view that when the tenant denies the title of the landlord, it is not for the Rent Controller to decide as to whether the landlord is having title in regard to that tenanted premises and he has to merely consider as to whether the denial of landlord's title is bona fide. If the Rent Controller records a finding to the effect that the said denial is bona fide, the eviction petition is liable to be dismissed and the landlord has to file a suit for eviction. But if the said denial is not bona fide, the eviction can be ordered on that ground alone.

7. Then a question arises as to whether it is within the competency of the Rent Controller to decide the question of title in an application filed under Section 11 of the Rent Control Act, when the tenant denied the title of the landlord. Full Bench of this Court held in *Changalal and Ors. v. Narsingh Pershad*, : AIR 1973 AP1 . that in such a case it is necessary for the Rent Controller to finally decide as to whether there is a relationship of landlord and tenant by making a regular and elaborate enquiry in the application filed under Section 11 of the Rent Control Act when the tenant denies such relationship and the said finding holds good even in the enquiry in the eviction petition filed under Section 10 of the Rent Control Act. In *Ishvarlal v. Kursheed Begum*, 1968 (1) ALT 110. Chandrasekhara Sastry, J. held that Section 11 of the Rent Control Act can be invoked only in a case where the relationship of tenant and landlord is admitted and not when it is disputed. But in an earlier judgment in *Hari Rao v. Subba Lakshamma* , 1966 (1) An.W.R. 122., Ekbote, J. opined that Section 11 can be resorted to even when the tenant disputed the relationship of landlord and tenant and it is necessary to determine in an enquiry under Section 11 as to whether there was a relationship of landlord and

tenant. In view of the conflict, the matter was referred to a Bench in C.R.P. No. 1327 of 1968 and that Bench consisting of Ekbote and Ramachandra Rao, JJ., accepted the view of Ekbote,). which was expressed in Hari Rao v. Subba Lakshamma , 1966 (1) An.W.R. 122. But when the matter had again come up before Chinnappa Reddy and A.D.V. Reddy, JJ., they preferred the view of Chandrasekhara Sastry, J. and hence the matter was referred to the Full Bench. It was held by the Full Bench that whenever the tenant denies the jural relationship of landlord and tenant and if an application under Section 11 is filed, it is necessary to make an elaborate and regular enquiry in the application under Section 11 in order to determine whether the relationship of landlord and tenant subsisted or not. It was also stated therein that it is not just and proper to make a summary enquiry in an application under Section 11(1) of the Rent Control Act in order to decide as to whether there is a relationship of landlord and tenant and a finding given in regard to the same has to be treated as finding in the enquiry in the application under Section 10 of the Rent Control Act and hence it is not necessary to make further enquiry in regard to the same in the enquiry under Section 10 of the Rent Control Act. By so observing it was held that Section 11 of the Rent Control Act can be resorted to even in a case where the tenant pleads that there was no relationship of landlord and tenant between them.

8. It was also observed in the above Full Bench judgment that where the tenant denies the title of the landlord, it will be a case of the tenant pleading that there was no relationship of landlord and tenant and even in cases where the tenant admits the title of the landlord, there may be cases where the tenant might be coming forward with a plea that there was no relationship of landlord and tenant by alleging that he is a trespasser or licensee.

9. When it is not open to the Rent Controller to determine the question of title of the landlord when it is denied by the tenant in the eviction petition filed under Section 10 of the Rent Control Act, can it be stated that it is open to the Rent Controller to determine the title of the landlord in the enquiry Under Section 11 of the Rent Control Act? By reading Section 11 along with Section 10(1) proviso and Section 10(2)(vi) of the Rent Control Act in the light of the Full Bench judgment of this Court in Changanlal v. Narsingh Pershad (2 supra) and the Division Bench

judgment of this Court in *Soni v. Kunda Nageswara Rao* (1 supra) it can be stated as under. Whenever the tenant denies the title of the landlord in an eviction petition filed under Section 10 of the Rent Control Act and if the landlord chooses to file an application under Section 11 during the pendency of the eviction petition, it is necessary for the Rent Controller to make a regular/ elaborate enquiry in order to determine whether the denial of the title of the landlord is bona fide or not. If it is the former, the eviction petition under Section 10 has to be dismissed as the finding in an enquiry Under Section 11 had to be treated as a finding in the petition filed under Section 10, in view of the Full bench judgment reported in *Changanlal v. Narsingh Pershad* (2 supra) and as the proviso to Section 10(1) envisages that in such a case the landlord had to file a suit for eviction. But if the said denial cannot be held as bona fide in the regular enquiry held under Section 11, the eviction had to be ordered as Section 10(2)(vi) provides that eviction had to be ordered on such ground and as the finding in the enquiry Under Section 11 had to be treated as finding Under Section 10 also. Hence, whenever the tenant denies the title of the landlord in the eviction petition filed under Section 10 of the Rent Control Act and even if he chooses to file an application Under Section 11, there will be only one enquiry for the purpose of determining the question as to whether the denial of title of the landlord is bona fide or not. If it is the former, the eviction petition had to be dismissed and if it is the latter, the eviction petition had to be ordered without any further enquiry in regard to the other grounds alleged in the eviction petition. In such a case, there may not be any occasion or need to pass an order under Section 11(1) of the Rent Control Act directing the tenant to deposit the arrears of rent within the time stipulated or to pass an order Under Section 11(4) if the tenant fails to deposit the same.

10. But where the tenant disputes the relationship of landlord and tenant, while admitting the title of the landlord, it is not only necessary to make an elaborate/regular enquiry in case an application Under Section 11 is filed in order to determine whether the relationship of landlord and tenant subsisted and if a finding is given to the effect that such relationship subsists, then it is necessary to pass order Under Section 11(I) of the Rent Control Act directing the tenant to pay the arrears within the stipulated time, if there are arrears, failing which an order under Section 11(4) will be passed, and it is also necessary to enquire under

Section 10 in order to decide whether there are any grounds for eviction. Of course, if in the enquiry under Section 11, the Rent Controller holds that the relationship of a landlord and tenant does not subsist, then it is a case of not only dismissing the application under Section 11 but also a case of dismissal of the petition filed under Section 10, for the Rent Controller has no right to pass an order of eviction unless there is relationship of landlord and tenant.

11. Neither the Rent Controller nor the Appellate authority gave a finding as to whether the denial of the title of the revision petitioner is bona fide or not. Hence, I am constrained to set aside the orders of the learned Rent Controller and also the Appellate authority and to remand the matter to the learned Rent Controller in order to make regular/elaborate enquiry for determining whether the denial of title of the revision petitioner is bona fide or not, and to dispose of the I.As., in accordance with law by keeping in view the observations made in this judgment. Accordingly all these C.R.Ps., are allowed and the matter is remanded to the Rent Controller. No costs.

12. As these are old matters, the Rent Controller has to dispose of the same expeditiously and preferably within three months from the date of receipt of this order.