

P. Raj Kumar Vs. N. Krishna

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Court : Andhra Pradesh

Decided On : Nov-11-1994

Reported in : 1994(3)ALT597

Judge : B.K. Somasekhara, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 2, 10(2), 10(3) and 22

Appeal No. : Civil Revision Petition No. 2413 of 1993

Appellant : P. Raj Kumar

Respondent : N. Krishna

Advocate for Def. : K. Mohan, Adv.

Advocate for Pet/Ap. : V. Eswaraiah, Adv.

Disposition : Petition allowed

Judgement :

ORDER

B.K. Somasekhara, J.

1. This revision petition is directed against the common judgment and order of the learned Chief Judge, City Small Causes Court, Hyderabad in R.A. Nos. 151 /92

and 135/92 dated 23-2-1993 which were filed by the petitioner and respondent herein respectively aggrieved by the order of the Principal Rent Controller, Secunderabad dated 6-3-1992 in R.C.No. 158/89. The petitioner and the respondent herein are the petitioner and respondent before the learned Rent Controller. The petitioner claimed to be the landlord of the petition schedule premises bearing Municipal No. 1-5-303, Dhan Bazar, Kalasiguda, Secunderabad, filed an eviction petition before the Principal Rent Controller under Section 10(3) (a) (1) and 10 (3) (a)(iii) (a), and 10(2) (i) of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short, 'the Act'). The respondent resisted the petition. The Rent Controller after holding an enquiry into the grounds of eviction and also the controversies, allowed the petition directing the respondent to put the petitioner in possession of the suit premises on or before 6-6-1992. The matter was taken up in appeal before the learned Chief Judge, City Small Causes Court by both the parties. In a common judgment, the learned appellate Judge, after hearing both the sides allowed the appeal and set aside the order of eviction passed by the learned Rent Controller and consequently dismissed the eviction petition directing the parties to bear their respective costs throughout.

2. In this petition it is contended that when the learned Rent Controller gave a finding in favour of the petitioner regarding the grounds of eviction passed, on evidence and adequate reasons, it was not open for the learned Chief Judge, City Small Causes to re-assess the evidence and come to a different conclusion, that the findings given by the learned Chief Judge on certain relevant controversies are not justified, that the learned Chief Judge has gone beyond the scope of the appeal, the rejection of the evidence of the petitioner as P.W.I was not justified and that the judgment and the order of the learned Chief Judge are liable to be set aside. As against this, it is contended on behalf of the respondent that the findings, the judgment and order of the learned Rent Controller were not justified and therefore, rightly they were set aside by the learned Chief Judge, City Small Causes, in the appeal.

3. The facts and circumstances leading to this revision petition require a brief record shorn of the details. The petitioner claimed to be the owner of the petition schedule premises and also the landlord of the respondent who was in the

premises as a tenant on a monthly rental of Rs. 100/-. He alleged that the respondent defaulted in payment of rent from 1-1-1981, that he required the schedule premises for bona fide and personal occupation, that a notice was issued to the respondent calling upon him to pay the arrears of rent inasmuch as to vacate the premises without any response and therefore, he filed the eviction petition. The respondent denied the relationship of landlord and tenant between the petitioner and him, he denied the grounds of eviction petition viz., wilful default in payment of rent and also the bona fide requirement of the premises for the self-occupation and sought for the dismissal of the eviction petition. During the enquiry, the petitioner examined himself as P. W. 1 and got marked as many as 3 documents - Exs.P-1 to P-3 whereas the respondent examined himself as R.W.1 and got marked Exs.R-1 to R-3 by way of evidence. Both the cases were heard by the learned Rent Controller. He raised the following three points for consideration:

- (i) Whether there is the relationship of landlord and tenant between the parties,
- (ii) Whether the respondent has defaulted in payment of rents for the period from 1-1-81 and if so, whether these defaults are wilful.
- (iii) Whether the petitioner, bonafide requires the suit premises for his selfoccupation.

All the three points were held in favour of the petitioner which lead to the order of eviction. In the appeal, the learned Chief Judge, City Small Causes, held point No. 1 against the petitioner whereas points 2 and 3 in his favour.

4. Having due regard to the scope of this revision petition and the controversies between the parties, the only point which deserves to be considered is whether the learned Chief Judge in appeal was justified in interfering with the findings of the learned Rent Controller inasmuch as in setting aside the order of eviction passed by him.

5. Despite the petitioner claiming to be the exclusive owner of the schedule premises, it was found by both the Courts below on evidence and admissions that there were more than one owner including the petitioner. One P.R. Anantham is

the father of the petitioner. He purchased the schedule premises from Bangaral Kistaiah, B. Muttaiah, B. Rangaiah and B.Mukundam under the original of the certified copy of the sale deed Ex.P-6 on 29th Dai 1358 Fasli. The respondent pleaded that Anantham, father Rajaiah inducted him as a tenant in the premises and that appears to be true. One Smt. Kamalamma is the second wife of Anantham and at his instance, the respondent was paying rent to Kamalamma towards her maintenance. Anantham the original owner of the property is dead. It is noted by both the Courts that Anantham and Rajaiah are dead and the property is succeeded by the petitioner, Kamalamma and other children of Anantham. Therefore, it is also noted that the petitioner is a coowner of the schedule premises. The evidence discloses that at no time, the petitioner had collected rent from the respondent nor the respondent paid to him. On the other hand, the respondent contended throughout that he was paying the rent to Kamalamma through out and not to the petitioner and he also produced certain receipts to show that he had paid the rent to Kamalamma. Thus the finding of the two Courts below that petitioner became a co-owner along with others in regard to the schedule premises is correct and not seriously assailed in this Court also.

6. The learned Rent Controller while holding that the petitioner is a coowner of the schedule premises held that he would be a landlord under Section 2(vi) of the Act. The learned Chief Judge in the appeal without adverting to such a legal position, held that there is no jural relationship of landlord and tenant between the petitioner and the respondent. The manner in which the question is dealt with by the learned Chief Judge appears to be totally unsatisfactory as against the manner in which it was correctly dealt with by the learned Rent Controller. He appears to have traversed beyond the scope of the jurisdiction while incidentally and half-heartedly referring to Section 14(1) of the Hindu Succession Act, 1956 to confer absolute estate on Kamalamma which was nobody's case. The law appears to be settled that a co-owner of a demised premises would come within the definition of landlord under Section 2 (vi) of the Act. It reads as follows:

' 'landlord' means the owner of a building and includes a person who is receiving or is entitled to receive the rent of a building whether on his own account or on behalf of another person or on behalf of himself and others or as an agent, trustee,

executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant'.

A co-owner although may be entitled to a share in a property would be in reality a owner of the entire property till it is split into shares, because his right to a share extends to every speck or a grain of the property to the extent of the share he holds therein. Till the share is separated by physical operation, the right of a co-owner cannot be located in such a property. Therefore, the co-owner in regard to a demised premises would be entitled to the profits from such an undivided property and therefore, would be entitled to collect the rent either on his own behalf or on behalf of himself and others viz., other co-owners. In that sense, he would answer the description of a landlord under the provisions stated above. The law appears to be settled that a co-owner is entitled to file an eviction petition either for his own benefit or for the benefit of other co-owner or co-owners. In *K. Nagappa v. T.D. Krishnasa*, : AIR 1971 AP243 , relied upon by the learned advocate for the petitioner, it is authoritatively pronounced that the Joint Hindu Family is a juridical person and therefore, where a building belongs to such a family the requirement of any member of it would be the requirement of the landlord. In this connection, Section 10 (3) (a) (i) (a) of the Act is made a reference and it equally applies to all the grounds of eviction since as a first measure, the juridical relationship of landlord and tenant should be decided by the Court to acquire jurisdiction to pass order of eviction under the Act. While dealing with a similar provision-Section 13(1)(f) of the West Bengal Premises Tenancy Act (12 of 1956), the Supreme Court in *Sri Ram Pasricha v. Jagannath*, : AIR 1971 AP243 , has declared the law that a co-owner landlord is an owner and can maintain a petition for eviction on the ground of reasonable requirement of the members of the family. Therefore, although the learned Rent Controller did not elaborate the legal implications as above when he referred to the provision to come to the conclusion about the jural relationship between the parties, he must be quite conscious of the true intent of the provision; whereas the learned Chief Judge appears to have totally avoided to go into such a question. Therefore, the finding of the learned Rent Controller regarding the relationship of the landlord and tenant between the petitioner and the respondent in the affirmative, deserves to be confirmed whereas the finding of the learned Chief Judge, City Small Causes Court in the appeal deserves to be set

aside inasmuch as looked with serious concern. Therefore, this Court concludes that the petition for eviction filed by the petitioner on the ground of wilful default in payment of rent and bonafide requirement of self-occupation is maintainable.

7. The petitioner alleged wilful default of payment of rent by the respondent. The respondent pleaded payment of rent to Kamalamma at the instance of her husband Anantam. He also produced some receipts in support of the payment. However, the learned Rent Controller did not accept them as a reliable evidence as he found certain suspicious nature in the documents Exs.R-1 to R-3. He also held that there was wilful default in payment of rent by the respondent. The learned Chief Judge without even considering such evidence produced by the respondent, exercised the privilege of appellate Court in simply agreeing with the learned Rent Controller in regard to such a finding. The ground of eviction under Section 10 (2) (i) of the Act contemplates that an order of eviction can be passed where the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable. When the eviction is sought on such a ground, the proviso to Section 10 (2) contemplates that if the Rent Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may notwithstanding any thing in Section 11, give the tenant a reasonable time, not exceeding fifteen day to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected. The law not merely contemplates the ground for eviction for default in payment of rent, but also wilful default. Perhaps, this provision may be synonym to rule against forfeiture contemplated under Section 114 of the Transfer of Property Act. What is wilful default depends upon the facts and circumstances of each case. The Rent Controller appears to have gone by a logical consequence of non-payment of rent in the absence of explanation as a wilful default. In the considered opinion of this Court, the Court is bound to give a finding that the default in payment of rent is wilful or in the converse and should dismiss the petition for eviction on such a ground by giving a different finding that the default either to pay or tender the rent by the tenant, was not wilful. In *Mallampalli Mallikarjuna Rao v. Godavarthi Seshamma*, : AIR 1971

AP298 , of our own High Court the meaning and the purport of the wilful default by a tenant in paying the rent has been elaborately dealt with. It is held therein that 'the primary meaning of the word 'wilful' as an act being spontaneous or arising out of free will has been supplanted in several branches of law. The use of the expression wilful default in the Rent Control Act affords the clear intention of the Legislature that it is not the mere omission to do a thing that is intended. The test should be whether the person failing to pay the rent had reasonable ground for the belief that the omission to pay rent did not constitute default. It is useful to draw a line between two types or broad divisions. On the one hand may be cited cases where the omission to pay is shown to be negligent and is lacking in any reasonable excuse or bona fide belief. On the other side of the line may be placed cases where a reasonable ground for a bona fide belief that no default has occurred, has existed'. In Chakka Subba Rao v. Nalisetty Venkamma, 1969 (2) An.W.R. 446 at 447, our own High Court further elaborated the term 'wilful default' to mean 'deliberate or intentional nonpayment or non-payment due to gross indifference. The word 'wilful' is used in contra-distinction to the words 'accidental' or 'inadvertent'. It does not imply any element of moral turpitude, but it eliminates an honest error of judgment'. Both the Courts below appear to have ignored the settled principles of law by our own High Court. That would be a judicial impropriety which calls for a selfintrospection inasmuch as an external control and reprehension by this Court. Particularly this observation is made against the learned Chief Judge, City Small Causes Court, Hyderabad while dealing with the appeal (it is expected that such Judges should be more learned than what they profess). It is unfortunate that even the two authoritative pronouncements of this Court have not even been referred by the Courts below. They must be reminded of the consequences in this regard. At any rate, the finding of the Courts below in regard to wilful default cannot be accepted. It may be pointed out that the respondent in the first place pleaded that he had paid the rent to Kamalamma the step-mother of the petitioner at the instance of the landlord namely, Anantam. He also categorically came out with a defence that he had paid the rent to Kamalamma. The petitioner claimed to be the landlord exclusively, but it transpired that he was only a co-owner and at no time had a reason or opportunity to collect the rent. In such a situation, it was necessary for the Courts below to examine

whether the respondent could be attributed with the adjudicative conduct of wilful default in paying the rent either to the real landlord or his nominee or the petitioner who is entitled to collect the rent in law as a co-owner. It is unfortunate that such important circumstances are not examined by the Courts below. Therefore, this Court is not convinced with such a finding recorded by the Courts below and chooses to set aside the same.

8. In regard to the ground of bona fide requirement for self-occupation both the Courts below appear to have dealt with the matter in a most unsatisfactory and cursory way. Admittedly, the petitioner has got some accommodation. The allegation shows as if the requirement is for additional accommodation. It is not known whether the brothers' house in which the petitioner is staying is a rented premises or the own house of the petitioner or the members of his family. Incidentally both in the demand notice, the petition and also in the evidence, it is brought out that the petitioner being an advocate is managing his residence inasmuch as his Lawyer's office in his brothers house and therefore, he needs the additional accommodation in the schedule premises to have his profession. It is not very clear whether the petitioner wants to both reside and carry on his profession of advocacy in the schedule premises or that he exclusively wants the same either for his residence or for carrying on his profession. These aspects are not at all considered by the Courts below. Again the learned Chief Judge has exercised his privilege of agreeing with the learned Rent Controller regarding the requirement of the premises by the petitioner for his self-occupation as an Advocate without examining the above aspects. The learned Chief Judge appears to have washed off his hands when once he came to the conclusion that there was no relationship of landlord and tenant between the parties unjustifiably and perhaps glided into the other two questions of grounds of requirement of eviction as a simple and incidental consequential event did not warranting a serious consideration. Therefore, such a finding of the Courts below also requires to be set aside.

9. As a whole the order of eviction passed by the learned Rent Controller and the Chief Judge, City Small Causes warrants to be set aside. The learned Advocate for the petitioner pleaded for examining the matter on merits and dispose of the

same to come to the conclusion whether the grounds of eviction are established or not. The learned Advocate for the respondent pleads that in view of the learned appellate Judge not examining these questions, inasmuch as from the materials the order of eviction, should be totally set aside. This Court is not persuaded by either of the pleas. Patently, the learned appellate Judge has totally failed in dealing with the matters in accordance with law much less satisfactorily. There is also the evidence on record to come to a definite conclusion on the grounds for eviction. This Court has no basis or material to examine such questions and in a revision petition, does not choose to venture into the appreciation of the evidence which is the job of the trial Court and the lower appellate Court. Therefore, this Court feels justifiably that the matter should go back to the learned Chief Judge, City Small Causes, Hyderabad to deal with the matter in accordance with law and in the light of the observations made above.

10. The revision petition is allowed. It is held that there is juridical relationship of landlord and tenant between the petitioner and the respondent in regard to the schedule premises and that the petition is maintainable for eviction on the grounds depended upon by the petitioner in the eviction petition. But the order and the judgment of the learned Chief Judge, City Small Causes, Hyderabad in the two appeals, are set aside. The two appeals before the learned appellate Judge are remitted back to him for disposal in accordance with law and in the light of the observations made above. The question of relationship of landlord and tenant held in the affirmative as above shall not be revoked. The appeals shall be disposed of within two months from the date of receipt of a copy of this order, by the Chief Judge, City Small Causes, Hyderabad. The parties shall bear their respective costs. The respondent-tenant shall not be permitted to contest the appeal of the petitioner (R.A.No. 151/92) or to pursue his appeal (R.A.No. 135/92) unless he pays to the petitioner or deposits all the arrears of rent upto 31-10-1994 within one month from to-day and the current rent from 1-11-1994 on or before 15th of each month. If he fails to comply with this order, the further proceedings shall be stopped under Section 11 (4) of the Act and the petitioner shall be put into possession of the demised premises forthwith.

