

Mohd. Ibrahim Vs. Mohd. Azam

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Court : Andhra Pradesh

Decided On : Jul-06-2005

Reported in : 2005(5)ALT206

Judge : L. Narasimha Reddy, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 2, 10(2) and 22; ;[Constitution of India](#) - Article 227

Appeal No. : C.R.P.No. 338 of 2001

Appellant : Mohd. Ibrahim

Respondent : Mohd. Azam

Advocate for Def. : Fazal Yousuffudin, Adv.

Advocate for Pet/Ap. : K. Venkataratnam, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

L. Narasimha Reddy, J.

1. The respondent herein filed R.C.No. 111 of 1994 before the IV Additional Rent Controller, Hyderabad under Section 10(2)(i) of the Andhra Pradesh Buildings

(Lease, Rent and Eviction) Control Act (for short 'the Act') against the petitioner seeking eviction from the premises bearing No. 21-1-78, situated at Delhi Darwaza, Hyderabad. The respondent pleaded that he became the owner of the property through a sale deed dated 27-5-1989 and his vendor, in turn, purchased the property under a sale deed dated 20-8-1988 from the legal representatives of the original owner by name Syed Ali Jaffer. He pleaded that the petitioner was the tenant in respect of the premises for a long time and having paid the rents up to September 1992, he stopped the payment of rents.

2. The petitioner resisted the R.C. According to him, the respondent is not the owner of the premises and not entitled to seek eviction. It was pleaded that during the life time of the father of the petitioner, he used to pay the rent at the rate of Rs. 20/- p.m., to the agent of the original owner Syed Ali Jaffer, till 17-1-1980 and thereafter, no one claimed the rents for it. He stated that he acquired prescriptive title over the premises and that the sale deeds through which the respondent is said to have acquired the title are not valid in law. He contended that his father acquired the property through an agreement of sale in the year 1955. Reference was made to certain proceedings as well as O.S.No. 6642 of 1991 filed by him against the respondent for the relief of injunction.

3. The Rent Controller dismissed the R.C., through its Judgment dated 8-5-1997 holding that there is a bona fide denial of title by the petitioner herein.

4. Aggrieved by the order of the Rent Controller, the respondent filed R.A.No. 309 of 1997 before the Additional Chief Judge, City Small Causes Court, Hyderabad. The appellate authority allowed the appeal and directed eviction of the petitioner. It was held that the denial of title of the respondent by the petitioner was not bona fide. Hence, this C.R.P., is filed by the petitioner under Article 227 of the [Constitution of India](#).

5. Sri K. Venkata Ratnam, the learned counsel for the petitioner submits that though a revision is maintainable under Section 22 of the Act, the necessity to file it under Article 227 of the [Constitution of India](#) arose on account of the fact that the lower appellate Court deviated from settled norms of adjudication. He submits that certain facts, which were not borne out by record were referred to by appellate

Court and that it cannot be sustained in law. Learned counsel further points out that once the Rent Controller held that the denial of title by the petitioner herein is bona fide, the only course of action open to the respondent was to file a suit and instead, he has chosen to file an appeal. He points out that there was nothing on record to disclose that the petitioner is the tenant of the respondent.

6. None appears for the respondent.

7. Though the learned counsel for the petitioner made an endeavour to explain to this Court, the circumstances, under which the C.R.P., came to be filed under Article 227 of the [Constitution of India](#), it is not necessary to elaborate the same. Once the entire matter is before this Court, it makes little difference whether it is presented under Article 227 of the [Constitution of India](#) or Section 22 of the Act, and no exception is being taken for filing the revision under Article 227.

8. The respondent sought for eviction of the petitioner on the ground that the petitioner committed default in payment of rents. The petitioner, in turn, resisted the proceedings by denying the very title of the respondent.

9. It is true that if a tenant denies the title of the landlord in the proceedings instituted under the Act, and it is found that the denial is bona fide, the only course left open to the landlord is to approach the civil Court for declaration of title and to take further proceedings thereafter. However, it is difficult to accept the contention that where a Rent Controller gives a finding that the denial of title by a tenant is bona fide, the landlord cannot prefer an appeal against it and the only course open to him is to file a suit. The finding recorded by the Rent Controller as to the nature of denial of title can certainly be challenged in an appeal as any other finding. It is only after such a finding becomes final, after appeal, revision etc. that the landlord has to take recourse to the remedy of the suit, if he wants to pursue the remedy.

10. Before the Rent Controller, the respondent examined P. Ws. 1 and 2 and filed documents Exs. A-1 to A-6. Ex.A-4 is the sale deed dated 20-8-1988 executed by the legal representatives of Syed Ali Jaffer in favour of one Syed Sadiq Ali Jaffer. Ex.A-2 is the sale deed dated 27-5-1989 executed by Syed Sadiq Ali Jaffer in favour of the respondent. Ex.A-1 is the G.P.A., executed by the respondent in

favour of his brother, P.W.1 P.W.2 is said to be the servant of the vendor of the respondent and he deposed that he was present when the respondent collected rents from the petitioner.

11. The petitioner deposed as R.W. 1 and he examined R.W.2. He filed Exs.B-1 to B-17. Ex.B-6 is the unregistered sale deed said to have been executed in favour of the father of the petitioner by the original owner. The other documents are the Caveats and notices exchanged between the parties.

12. While deciding the question as to whether the denial of title of the landlord by a tenant is bona fide or not, the Rent Controller is required to maintain a perfect balance, between two extremities. On the one hand he cannot ignore the evidence before him, while deciding about bona fides of denial of title, by the tenant. On the other, he cannot assume the role of a Civil Court to declare the title of the landlord. The Rent Controller is required to examine the nature of denial, in the context of relevant facts. If the landlord is able to place necessary material before him, as to his title, the Rent Controller has to examine the acceptability of the same vis-avis, the nature of the material that is placed by the tenant in this limited context. The situation becomes significant when the tenant does not claim title in himself.

13. In the instant case, the petitioner admitted that he continued to pay the rents up to the year 1980. It is not his case that the premises were transferred to him by the original landlord or his legal representatives. He, however, pleaded that after 1980, he acquired the prescriptive title. It is not as if the original landlord was without any legal heirs or that his property became escheat. Once the petitioner admitted that he is the tenant in respect of the premises, it is not open to him to deny that status vis-a-vis the premises.

14. It is a different thing as to who is the person entitled to receive the rent. The definition of the expression 'landlord' under Section 2(vi) of the Act, assumes importance. Such question would depend on the nature of the transactions that took place between the original landlord and the person, who derives title from him. Viewed from this angle, the approach of the Rent Controller cannot be sustained. The lower appellate Court corrected this and took the view that the denial of title of the respondent by the petitioner was not bona fide. This Court

does not find any basis to interfere with that finding.

15. As observed earlier, the proceedings were initiated against the petitioner on the ground that he committed default in payment of rents. When he came forward with the plea that he is not the tenant of the respondent, the further necessity to examine as to whether there was any default in payment of rents is virtually obviated, since it emerges that the respondent acquired the property through Ex.A-2 from the rightful owner. He answers the description of the landlord under the Act and the petitioner had incurred the liability to be evicted.

16. The learned counsel for the petitioner relied upon a Judgment of this Court in D. V. Ratnam Setty v. S. Narayana Setty, 1989 (1) ALT 652. On a close reading of the Judgment, it is evident that it has no application to the facts of this case. On the other hand, it supports the opposite view.

17. The C.R.P. is accordingly dismissed. The petitioner is granted six months time from to-day, to vacate the premises on payment of rent at the rate of Rs. 20/- per month on or before 10th of every month commencing from August, 2005. There shall be no order as to costs.