

Ravula Needlamma Vs. Sandaiah

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Court : Andhra Pradesh

Decided On : Aug-16-2005

Reported in : 2005(6)ALD295

Judge : P.S. Narayana, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 8 and 22; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11 and 115 - Order 3, Rules 1 and 2; Bombay Rents, Hotel and Lodging House Rates Control Act, 1947

Appeal No. : GRP No. 2355 of 2005

Appellant : Ravula Needlamma

Respondent : Sandaiah

Advocate for Def. : V. Tulasi Reddy, Adv.

Advocate for Pet/Ap. : R.A. Achuthanand, Adv.

Judgement :

ORDER

P.S. Narayana, J.

1. Smt. Ravula Neelamma represented by her G.P.A. holder Sri Bala Mallesh, filed the present revision petition under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter in short referred to as 'the Act' for the purpose of convenience) aggrieved by the order of eviction made on the ground of wilful default in R.C.C. No. 345 of 1998 on the file of Second Additional Rent Controller, Hyderabad as confirmed in R.A. No. 2 of 2001 on the file of Additional Chief Judge, City Small Causes Court, Hyderabad.

2. The respondent in the CRP is the landlord. Hereinafter the parties would be referred to as the landlord and tenant for the purpose of convenience. The landlord, as the owner of the premises in question filed the R.C.C. No. 345 of 1998 on the file of the II Additional Rent Controller, Hyderabad praying for eviction stating that he purchased the property by virtue of Registered Sale deed dated 23-12-1996 from Sri K. Pandit and the revision petitioner even by that time was the tenant of the vendor of the landlord and after the registration of the sale deed, the tenancy was attorned orally in the first week of January, 1997. The specific stand taken by the landlord is that the tenant had fallen arrears of rent from January 1997 till the date of the eviction petition @ Rs. 125/-per month. It is also the case of the landlord that despite the fact that the landlord had been demanding rents she avoided payment of rents intentionally and not satisfied with the same she filed a suit O.S. No. 1893 of 1998 for injunction before VIII Junior Civil Judge, City Civil Court, Hyderabad and thus the tenant has been harassing him and in such circumstances on the ground of wilful default the eviction petition R.C.C. No. 345 of 1998 as aforesaid was filed.

3. The tenant filed a lengthy counter denying the allegations and taking specific stand that she had been paying rents to the original landlord regularly and the original landlord last collected rents upto November 1996 and the further specific stand is that original owner had been receiving rents once in six or seven months or even once in year and inasmuch as the original landlord did not turn up to collect rents she approached him for payment of rents, but he refused to receive the rents. It was further stated that when there was threat of dispossession a suit for permanent injunction was filed and temporary injunction was obtained and several other details relating to the said litigation also had been narrated in the

counter. Further specific stand was taken that there was no attornment of tenancy prior to the event aforesaid and in view of the same the tenant remitted the rents by money order on 12-5-1998 from December, 1996 to May 1998, but the same was refused and she also issued notice under Section 8 of the Act and the same was refused and she has narrated the other details also.

4. The present landlord had examined himself as P.W.1 and the prior landlord from whom the property was purchased was examined as P.W.2. Ex.P1 the registered sale deed, Ex.P2 sale deed in Urdu, Ex.P3 translation of Ex.P2 were marked. The tenant was not examined, but the son of the tenant incidentally the G.P.A. holder was examined as R.W.1, Ex.R1 the General Power of Attorney, Exs.R2 to R17 the Money Order postal receipts and refused postal acknowledgments, Exs.R18 and R19 office copy of legal notice, Ex.R20 postal acknowledgments and Ex.R21 letter for certificate of posting, had been marked.

5. The learned Rent Controller on appreciation of evidence available on record came to conclusion that the tenant committed wilful default and ordered eviction. Aggrieved by the same, the tenant represented by G.P.A. holder preferred appeal R.A. No. 2 of 2001 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad. The learned Judge on appreciation of the evidence available on record recorded findings in detail commencing from Paras-11 to 19 and ultimately confirmed the order of eviction. Aggrieved by the same, the tenant represented by the G.P.A. holder preferred the present C.R.P.

6. Sri Achutanand, learned Counsel representing the revision petitioner would contend that there was valid tender and there is no default much less wilful default for 18 months and while appreciating whether the default is wilful or not the conduct of the parties may also have to be looked into. The learned Counsel also would explain under what circumstances, the tenant filed the suit when there was threat of dispossession and till then there was no attornment of tenancy. The Counsel also would explain that specific stand was taken by the tenant that the prior landlord was collecting rents at irregular intervals and for sufficiently long time the tenant kept quiet under the fond hope that the landlord would be approaching her and subsequent thereto when there was the threat of dispossession, the

events came to her knowledge. The learned Counsel also would contend that R.W.1 is none other than the son of the tenant and it cannot be said that the son had no knowledge about these facts and merely because incidentally the son also is the G.P.A. holder it cannot be said that as a G.P.A. holder, he is not competent to depose about the facts which had been within the knowledge of R.W.1. The learned Counsel while elaborating the submissions had pointed out to Exs.R8 to R14 and would submit that these documents would clearly establish that though there was valid tender by the tenant the landlord deliberately and intentionally had avoided to accept or receive the same with a view to make the ground of wilful default so as to throw the tenant out. The learned Counsel also would submit that the tenant has been the tenant for sufficiently a long time, the admissions of P.W.1 may also have to be taken into consideration in this regard. The learned Counsel pointed out to the relevant portions of the evidence of R.W. 1, P.W. 1 and also P.W.2 and placed reliance on certain decisions to substantiate his contentions and would conclude that in view of the fact that the revisional powers of this Court being wider under Section 22 of the Act when compared to Section 115 of CPC, in the light of the mis-appreciation of findings by the Courts below and the perverse findings recorded in relation thereto the C.R.P. may have to be allowed.

7. Per contra, Sri Tulasi Reddy, learned Counsel representing the landlord would maintain that the C.R.P. is filed by the G.P.A. holder and it is highly doubtful whether the G.P.A. holder can maintain the C.R.P. at all under Section 22 of the Act. In the alternative the Counsel would further contend that the son has no personal knowledge about what happened and the events which had been deposed by R.W.1 cannot be said to be within the knowledge of R.W.1 and hence, the non-examination of the tenant had been taken note of by both the Courts below and appropriate findings had been recorded in this regard. The learned Counsel also had relied upon certain decisions to substantiate his contentions relating to the nature of evidence which can be let in by examining a power of attorney holder and to what extent the same can be looked into by the Court. The Counsel while further elaborating his submissions had taken this Court through the evidence of P.Ws. 1 and 2 and would contend that there is clear evidence with regard to attornment of tenancy and despite clear evidence of P.Ws 1 and 2 on the aspect of attornment of tenancy there is no contra evidence since it was not within

the knowledge of R.W.1 and in this view of the matter non-examination of tenant would play a vital role. The learned Counsel would contend that in the light of the same, clear findings had been recorded that there was attornment of tenancy and despite knowledge regarding execution of registered sale deed in favour of the present landlord and despite the repeated requests and demands made by the present landlord the tenant was not willing to pay the rents and this conduct of the tenant would definitely amount to wilful default. The learned Counsel also placed reliance on certain decisions to substantiate his contentions. The Counsel concluded that at any rate in view of the concurrent findings recorded by both the Courts below the revisional Court need not disturb such well considered findings of Courts below.

8. Heard both the Counsel. Perused the findings recorded by the learned Rent Controller and the findings confirming the findings of the Rent Controller by the appellate authority as well.

9. It is no doubt true that the revisional jurisdiction of this Court under Section 22 of the Act is wider when compared to the revisional jurisdiction under Section 115 of CPC. It is also true that when there is improper appreciation of evidence or misappreciation of evidence and perverse findings recorded by both the Courts below this Court may reappraise the evidence to the limited extent for the purpose of recording proper findings. Except to this limited extent, the revisional jurisdiction of this Court even under Section 22 of the Act cannot be stretched too far. Be that as it may, this is a revision filed by the G.P.A. holder representing the tenant assailing the concurrent findings recorded by both the Courts below.

10. The present landlord who was examined as P.W.1 specifically deposed that Smt. R Neelamma is tenant in relation to the petition schedule premises in two rooms and he purchased the property under registered sale deed on 22-12-1996 under Ex.P1 and this witness also specifically deposed that his vendor informed to the tenant that the petition schedule premises was sold away to P.W.1 and he also asked the tenant to pay the future rents to the said purchased P.W.1. This witness also specifically deposed about the attornment of tenancy. P.W.1 also deposed that after attornment of tenancy he had demanded for payment of rents but the

tenant was not willing in stead she filed suit for permanent injunction and this witness also deposed about the further details relating to the wilful default committed by the said tenant. This witness deposed about the details of the rent and also deposed that for sufficiently a long time the tenant had been the tenant of his vendor and subsequent thereto she is continuing as tenant under him. On the aspect of attornment, apart from P.W.1, P.W.2, the original owner-earlier landlord also was examined who had deposed that in the first week of January, 1997 P.W.1 and this witness both of them went to the tenant and informed about the sale of the property and directed her to pay rents to the present landlord and the tenant promised that she will pay the rents. This witness also deposed that subsequent thereto she filed a suit for permanent injunction. This witness further deposed about the other details. As far as attornment of tenancy is concerned the evidence of P.Ws.1 and 2 is available on record. As already referred to supra, the tenant was not examined but however, son of the tenant who is incidentally the G.P.A. holder of the tenant was examined as R.W.1. When the age of R.W.1 is taken into consideration and in relation to the commencement of tenancy as far as the events long prior to the present incidents it cannot be said that those aspects are within the knowledge of the son of the tenant, R.W. 1. It is no doubt true that R.W.1 is not only the G.P.A. holder but also the son of the tenant. It may be that being the son of the tenant certain of the facts may be within the knowledge of R.W.1. In that context submissions at length were made by the Counsel representing the revision petitioner to the effect that to that limited extent evidence of R.W.1 can definitely be relied upon. R.W.1 no doubt deposed about the payment of rents and also tendering of the rents and also had thrown the blame on the landlord in deliberately refusing to receive the rent to make it a ground for eviction.

11. In *Ch. Seshagiri Rao v. A.V. Gangadhar Sastry*, 1993 (2) APLJ 37 (SN), in CRP No. 2530 of 1991 dated 7-9-1993, the learned Judge of this Court while dealing with Section 2(vi) of the Act held that the definition of landlord includes a person who is entitled to receive the rents by virtue of the sale deed and the petitioner is entitled to receive rents and therefore, he is the landlord within the meaning of Section 2(vi) of the Act. It was further observed that attornment by the respondent-tenant is not necessary as the purchaser under the registered sale deed steps into the shoes of the original owner and in case the respondent

succeeds in the suit of specific performance of oral agreement his rights can be worked out pursuant to the said decree.

12. Strong reliance was also placed on the decision of the Apex Court in *Janki Vashdeo Bhojwani and Anr. v. Indusind Bank Ltd., and Ors.* : AIR 2005 SC439 , wherein the Apex Court while dealing with power-of-attorney holder to act on behalf of principal and while explaining the word 'acts' in Order III Rules 1 and 2 of CPC held that the power to depose on behalf of the principal extends only to depositions in respect of acts done by power of attorney holder in exercise of powers granted by the instrument and the term 'acts' would not include deposing in place of and instead of principal for acts done by principal and not by power-of-attorney holder. Similarly power-of-attorney holder cannot depose for principal in respect of matter of which only principal can have personal knowledge and in respect of which principal is liable to be cross-examined.

13. Reliance was also placed on *Smt. Ramkubai v. Hajarimal Dhokalchand Chandak and Ors.*, : AIR 1999 SC3089 , wherein the Apex Court while dealing with the proof in relation to the ground of bona fide requirement under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 on facts held that it is not essential that the landlord must enter witness box to support his case and bona fide requirement is not a fact which can be established only by the landlord. The said decision is distinguishable on facts for the reason that here is a case of wilful default by the landlord and it is the specific case of both P.Ws.1 and 2 that they approached the tenant and informed her about the sale by P.W.2 in favour of P.W.1 and it is also pertinent to note that it is the case of the tenant that tenancy commenced long ago and it cannot be said that all these factual aspects would be within the knowledge of R.W.1 though R.W.1 may be the son of the tenant. All the factual aspects which may be within the knowledge of the tenant need not necessarily be within the knowledge of the son also merely because he belongs to the self same family. Hence, in this view of the matter this witness cannot depose about certain aspects which were within the exclusive knowledge of the tenant and in this view of the matter non-examination of the tenant may have to be seriously viewed and in the light of the same both the Courts recorded findings in this regard. The said findings need not be disturbed in any way in the light of the

detailed reasons recorded by both the learned Rent Controller and also the appellate authority.

14. On the aspect of wilful default submissions in elaboration were made by both the Counsel on the respective conduct of the parties in offering rents, in intentionally refusing the tender made and the subsequent events which had been made a ground for eviction in the present revision. It is no doubt true that R.W.1 had deposed certain aspects trying to throw the blame on the part of the landlord in intentionally and deliberately refusing to receive the rent. The learned Rent Controller and also the appellate authority recorded reasons in detail in this regard. It is also pertinent to note that the tenant had invoked the jurisdiction of the Rent Controller by moving an application under Section 8 of the Act. Strong reliance was place on M. Bhaskar v. J. Venkatarama Naidu, : (1996)6SCC228 , wherein the Apex Court at Para 4 observed as hereunder :

'The contention of Shri Subba Rao, the learned Counsel for the appellant, is that the respondent-landlord was staying in Hyderabad and the power-of-attorney holder is his brother-in-law-cum-maternal uncle and that whenever he was coming to Madanapalle, he was paying the rents and, therefore, there is a contract to the contrary. We find no substance in the contention. Though parties are related, nonetheless when the appellant is staying in the premises as tenant, he has got an obligation to pay the rent regularly. If he does not do so, he commits wilful default. If he finds that the landlord is evading the payment of rent, procedure has been prescribed under Section 8 of the Act to issue notice to the landlord to name the bank and if he does not name the bank, the tenant has to file an application before the Rent Controller for permission to deposit the rent. The appellant did not avail of that remedy. The omission to avail of the procedure under Section 11 does not disentitle the landlord to seek eviction for wilful default.'

15. Apart from this aspect of the matter, the stand taken by R.W.1 as G.P.A. holder in the absence of evidence of tenant that only when there was threat of dispossession she came to know about the so called sale and prior thereto it is not within her knowledge and because of the threat she was forced to file a suit for perpetual injunction also cannot be believed. It is no doubt true that there is some

evidence on record that at certain irregular intervals rents were being collected by earlier landlord. That cannot be taken advantage especially in the light of the conduct of the tenant apart from the non-examination of the tenant as a witness. There are several other circumstances which had been taken into consideration by both the Courts below in recording a positive finding relating to wilful default, having invoked the jurisdiction of the Rent Controller. The conduct of the tenant is very clear that her inclination is not to satisfy the obligation of payment of rents regularly which is contemplated by the provisions of the Act. In the light of the same the irresistible conclusion which had been arrived at by both the Courts below that it would amount to wilful default cannot be found fault.

16. The learned Counsel representing the revision petitioner also placed reliance on certain decisions in Smt. Chunnu Bai v. K. Ramulu and Ors., : 1997(5)ALT785 and Namala Ramchandra Rao v. Kakileti Bhaskar Ram Murthy and Ors., : 2004(2)ALD558 , and submissions at length were made to the effect that inasmuch as perverse findings had been recorded by both the Courts in appreciation of evidence, the said findings to be disturbed by this Court.

17. Having perused the findings recorded by both the Courts below though there is some slight deviation in certain observations made by the appellate authority, in substance both the Rent Controller and the appellate authority recorded positive findings relating to wilful default in payment of rents. Hence, this Court is of the considered opinion that the said findings need not be disturbed in any way since there is no perversity in appreciating the evidence. Accordingly, the CRP hereby shall stand dismissed. No costs. The tenant is granted three months time to vacate the premises.