

**B. Vittal Vs. Ramesh Kumar**

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**Court :** Andhra Pradesh

**Decided On :** Sep-11-2000

**Reported in :** 2000(6)ALD344; 2000(5)ALT705

**Judge :** T.CH. Surya Rao, J.

**Acts :** Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1960 - Rule 23(7); [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rules 97 and 99

**Appeal No. :** CRP Nos. 3419 and 3420 of 2000

**Appellant :** B. Vittal

**Respondent :** Ramesh Kumar

**Advocate for Def. :** Mr. Shyam S. Agrawal, Adv.

**Advocate for Pet/Ap. :** Mr. Brahmadandi Ramesh, Adv.

**Judgement :**

ORDER

1. As the parties are same in both the revisions and as common question of law involved in both the revisions they are heard together and are being disposed of by this common order.

2. The revision petitioner assails the orders of the I Additional Rent Controller, Hyderabad dated 9-8-2000 passed in EA No.8 of 2000 in EP No.36 of 1990 in RC

No.549 of 1978 and EA No.9 of 2000 in EP No.37 of 1990 in RC No.550 of 1978. Claiming to be the owner of the premises in dispute and as a possessor thereof the revision petitioner obstructed the delivery of possession of the premises in favour of the respondent herein who filed RC Nos,549 of 1978 and 550 of 1978 seeking eviction of the tenant.

3. The facts leading to the filing of these revisions are as follows: The revision petitioner claims to have purchased the premises in question under agreement of sale from one K. Ganga Reddy the original owner thereof. The said agreement is dated 9-11-1973. It is in respect of house bearing DoorNo.5-9-174/1, 5-9-175 measuring 250 square yards only. Since the said Ganga Reddy failed to execute the sale deed pursuant to the sale agreement he filed OS No.1561 of 1998 on the file of the IX Junior Civil Judge, seeking specific performance of the agreement. There was compromise in the suit between the parties and in terms thereof the said Ganga Reddy agreed to execute the sale deed within fifteen days by receiving an amount of Rs.25,000/- in addition to the amount already paid. The suit was decreed accordingly in terms of the compromise. At the time of filing of the suit a Commissioner was appointed in IA No.840 of 1998 for the purpose of making local inspection and the Commissioner found the revision petitioner to be in possession of the premises in question. The respondent herein filed EP Nos.36 and 37 of 1990 against third parties who have absolutely no connection whatsoever with the premises in question. Therefore, the revision petitioner filed claim petitions seeking to dismiss the execution petitions filed by the respondent herein.

4. The petitions were resisted by the respondent by filing a counter mentioning inter alia that he purchased the property under a registered sale deed from the original owner Sri K. Ganga Reddy and that the tenancy in respect of the premises in question and other mulgies was attained in his favour and that the revision petitioner has been set up by one P. Hemalatha, wife of Christopher and one Mr. Peter, who failed in their effort in EA Nos.82 and 83 of 1990 in OS No.538 of 1994 and OS No.27 of 1990 claiming the suit property under a false claim and therefore there were no merits in the petition.

5. After having heard both sides the learned I Additional Rent Controller dismissed the petitions. Having been aggrieved by the same the revision petitioner filed the present revisions.

6. The learned Counsel appearing for the revision petitioner placing very much reliance on the report of the Commissioner and the sale deed executed by the Court on behalf of the said Ganga Reddy contends that all along from 1973 onwards the revision petitioner has been in possession of the suit property and the eviction order said to have been obtained by the respondent herein against the others will not bind the rights of the petitioner.

7. The learned Counsel for the respondent on the other hand contends that it is a third round of litigation. The tenants having suffered a decree for eviction set up independent claims and when they failed in their effort in thwarting the eviction proceedings they set up the revision petitioner to claim the property as his and therefore there are no merits in the petition.

8. The revision petitioner filed the petition before the lower Court under Rule 23(7) of the A.P. Buildings (Lease, Rent and Eviction), Control Rules framed under the A.P. Buildings (Lease, Rent and Eviction) Control Act. The maintainability of the claim petitions under the said provisions is not in dispute. Anyway the third party claiming independent title over the property in dispute need not wait till he is dispossessed from the premises so as to claim the property under the provisions of the Civil Procedure Code, even if sub-rule (7) of Rule 23 of the Rules did not say in so many words that such an application is maintainable by the obstructor third party. In view of the settled legal position the application of the revision petitioner can be maintained.

9. The revision petitioner approached this Court earlier on one occasion in CRP No.2200 of 2000. While dismissing the revision petition it has been observed by this Court that there is no need to record any oral evidence and that it is open to the revision petitioner to file affidavit supporting the documents since he filed the claim petition basing on a decree in OS No.1561 of 1998. Thereafter the learned I Additional Rent Controller passed the impugned order after having heard both sides on the application.

10. Before proceeding to deal with the respective contentions it may be mentioned here that the proceedings under Rule 23(7) of the Rules are summary in nature unlike the proceedings under Rule 97 or Rule 99 of Order 21 CPC as the case may be, where those proceedings were to be treated as if it were a suit, and question of title should also be considered. The revision petitioner now claims the property as a purchaser thereof from the original owner one Sri K. Ganga Reddy. The fact that the said Ganga Reddy was the original owner of the premises and the respondent claims to have purchased the property under registered sale deed from him is not in dispute. What the revision petitioner contends is that initially the agreement was executed by the said Ganga Reddy in his favour way back in 1973 which is far prior to the registered sale deed said to have been executed in favour of the respondent herein and therefore the said sale deed is not binding upon the revision petitioner. The sale agreement dated 9-11-1973 was not filed in this case. A certified copy of the decree in OS No.1561 of 1998 said to have been filed pursuant to the said agreement, has been filed. On the face of the circumstance that sale agreement was dated 9-11-1973 there arises any amount of doubt as to how the revision petitioner had not pursued the matter till he filed the suit in the year 1998 in OS No.1561 of 1998 as nearly 25 years have gone by in between. It is well settled law that the agreement of sale will not confer any title over the property since it is only a contract of sale and the rights over the property the subject matter of the agreement will be crystallised only when there is a regular conveyance deed. In that view of the matter, even though the registered sale deed said to have been executed in favour of the respondent herein by the owner after the said agreement dated 9-11-1973 which was far prior to the date of decree in OS No.1561 of 1998 cannot be said to have been vitiated. The revision petitioner has not impleaded the respondent herein in the suit as the subsequent purchaser with notice of the earlier agreement of sale in his favour. The contention of the learned Counsel for the petitioner is that the revision petitioner did not know about the sale in favour of the respondent till such time when he heard about the filing of the execution petitions for dispossession, and he did not know any of the proceedings before the Rent Controller in RC No.549 of 1998. Whatever may be the contention prima facie it is obvious that by the date of decree in OS No.1561 of 1998 which was passed pursuant to the compromise between the revision

petitioner and the original owner the said Ganga Reddy who had no title by then having already parted with title under a registered sale deed executed by him in favour of the respondent herein it cannot be said that the decree in OS No.1561 of 1998 will pass a valid title in favour of the petitioner vis-a-vis the respondent herein. Till such time when the revision petitioner establishes his title in a property constituted suit against the respondent herein, he cannot claim prima facie a valid and bona fide title over the disputed premises qua the respondent.

11. As regards the possession he is very much relying upon the report of the Commissioner who was appointed ex parte in the suit OS No.1561 of 1998. It is now settled law that a Commissioner cannot be appointed to fish out the evidence to know as to who is in possession of the property. Here is a case where the Commissioner was appointed ex parte. The report submitted by him therefore cannot bind the respondent herein as no other evidence by means of affidavit as observed by this Court in CRP No.2200 of 2000 has been filed in this case. The claim of the revision petitioner that he has always been in possession from 9-11-1973 has not been clearly established in this case.

12. It is now represented across the Bar that the revision petitioner has already filed a suit for declaration that the decree in RC No.549 of 1978 is not executable as against the revision petitioner who is the owner thereof. The revision petitioner can therefore pursue his remedy and can establish a regular title over the property in question as against the respondent herein in view of the fact that the proceedings under Rule 23(7) of the Rules are summary in nature and as discussed by me supra the evidence on record is not sufficient to conclude that the revision petitioner is having title over the premises in question and he is claiming in good faith on his own account, his claim cannot be sustained.

13. For the foregoing reasons there is nothing to interfere with the orders passed by the I Additional Rent Controller, Hyderabad. Revisions therefore fail and they are dismissed. No costs.