

Kanda Lingaiah Vs. P. Nirmala Devi

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Court : Andhra Pradesh

Decided On : Aug-23-2002

Reported in : 2002(6)ALD590

Judge : V. Eswaraiah, J.

Acts : Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Sections 10(3) and 26

Appeal No. : CRP No. 1828 of 2001

Appellant : Kanda Lingaiah

Respondent : P. Nirmala Devi

Advocate for Def. : K. Raghuveer Reddy, Adv.

Advocate for Pet/Ap. : P. Gangarami Reddy, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V. Eswaraiah, J.

1. The unsuccessful tenant filed this civil revision petition. The respondent is the landlady of the petition schedule property bearing No. 2-6-93/5 situated at S.B.H.

Road, Near Clock Tower, Mahabubnagar Town of Mahabubnagar District. The respondent filed R.C.No. 4/1996 on the file of the Junior Civil Judge-Cum-Rent Controller, Mahabubnagar for eviction of the petitioner herein under Section 10(3) (a)(iii)(b) directing to evict the tenant and put the landlady in possession for the purpose of commencing the business by her son and husband. It is stated that the husband of the respondent is a retired employee and son of the respondent was running a medical stores at Santosh Nagar, Hyderabad, he sustained loss and, therefore, she requires the said premises for her bona fide requirement to commence the business by her son and husband. Admittedly, the rent at the time of the filing of the R.C. was only Rs. 1,000/-and the Rent Controller was having the jurisdiction to entertain the R.C, the Rent Controller examined (he landlady - respondent herein as PW1 and marked Ex.A1 to A5 on her behalf. The petitioner herein - tenant is examined as RW1 and RW2 is also examined. The Rent Controller, upon considering oral and 2 documentary evidence, held that the husband of the respondent retired from Government service and her son is educated unemployed person want to start medical business at Mahabubnagar and in fact her sons carried on the medical and general store, business at Maruthi Nagar, Santosh Nagar Hyderabad under the name and style of 'Anand Medical and General Stores' and the same was closed. Since they have got only one non-residential premises at Mahabubnagar they intend to start the business for self-employment of her sons and also to rehabilitate her retired husband. There is no evidence on record in rebuttal to the evidence of the landlady PW-1 as the said premises is required for running the medical and general stores for her sons and by her retired husband. It is also stated that Mahabubnagar is the native place of the landlady, her husband and sons intend to settle down at Mahabubnagar having their own nonresidential business at Mahabubnagar. The Rent Controller satisfied the bona fide requirement of the said premises for running the business by the sons of the respondent since the sons of the respondent have already got experience in the line of medical and general store business. The Rent Controller accordingly allowed the petition and the respondent-petitioner herein was directed to vacate the premises within three months from the date of the said order. Aggrieved by the said order dated 3-4-1999, the petitioner filed RCA2/1999 on the file of the Rent Appellate Authority-cum-Senior Civil Judge, Mahabubnagar. The

Rent Appellate Authority, after considering the oral and documentary evidence available on record the judgment of the Rent Controller, confirmed the order of the Rent Controller and dismissed R.C.A.2/1999 by order dated 29/01/2001.

2. The learned Counsel appearing for the petitioner - tenant submits that the respondent has not proved her bona fide requirement for commencing the business in the said premises and, therefore, both the Courts below erred in ordering the eviction of the petitioner herein. It is stated that to carry on the medical business, a licence is required and her sons are not qualified to run the medical shop and, therefore, it cannot be said that the said premises is bona fide required to commence the business.

3. It is to be stated the fact that the sons of the respondent carried on the medical and general stores at Hyderabad has not been denied or disputed. Even if the lower appellate authority agreed to consider such a contention and held that the sons were having medical shop business at Maruthi Nagar, Santosh Nagar, Hyderabad. Since the doctor left the premises they have closed the business and in fact the petitioner - tenant himself deposed that the sons of the respondent and her husband were having medical business for some time at Hyderabad and, therefore, it is an admitted fact that the sons and the husband of the respondent are doing the medical shop business at Hyderabad and that it was closed. They have experience in carrying on the medical shop and not only they are intending to open medical shop but also general stores. It is the look out of the sons and husband of the respondent to secure a licence from the qualified person and they can carry on the business on partnership or they can make some other arrangement even otherwise there is no impediment to carry on the general stores. The learned appellate authority considering the judgment of the Apex Court in Smt Prativa Devi v. T.V.Krishna, : (1996)5SCC353 , and the judgment of this Court in Manoj Kumar Jain v. Lalchand Ahuja, 2000 (3) LS 351, wherein it was held that once the landlord establishes his intention to start his own business and requires the premises for his own bona fide requirement, the tenant cannot contend that the landlord has no practical experience and incapable of starting the business. The landlord is the best Judge in deciding or choosing his own accommodation and entitled to evict the tenant on the ground of his bona fide

requirement,

4. The requirement by the sons and husband of the landlord is also requirement of the landlord and, therefore, in the present case the respondent established her bona fides for commencing the business by her sons and husband in the medical business and general stores.

5. There is ample evidence to show that the medical shop which was run by the sons of the landlady was closed and the sons and the husband of the respondent have got experience and they have bona fide required the said premises to commence the business in the petition schedule property. In view of the concurrent findings arrived at by both the authorities below based on the oral and documentary evidence with regard to the bona fide requirement of the said premises, I do not agree with the contention of the learned Counsel for the petitioner that the respondent requires petition schedule property for her bona fide requirement by her sons and husband to commence the business. Accordingly the contention of the learned Counsel for the respondent is rejected.

6. The learned Counsel also contended that admittedly the rent enhanced from Rs. 1,000/- to Rs. 1,325/- as per rental agreement (Ex.A-4) dated 22/08/1996. It was also revealed from as per rental agreement dated 06/04/1998 (Ex.A-5) as on the date of filing the rent control case the rent was only Rs. 1,000/-. It is stated in the rental deed itself that the lease deed was executed without prejudice to the rights and contention of the landlady with regard to eviction of the petitioner herein. Merely because the rent has been enhanced reserving her right to evict the tenant in pursuance of the eviction petition filed by her, it cannot be said that the rent controller has no jurisdiction to order for the eviction. It 'is well settled principle that the Hon'ble Supreme Court of India in *Atmaram v. Eswar Singh Punya*, : (1994)IIILLJ972SC , that the rights of the parties will have to be determined on the date of rights available to them on the date of the suit. It is also well settled principle that the rights of the parties crystallises on the date of the institution of the suit and even though the rent enhanced and the building becomes older than 10 years the rights will continue to be available until the suit is disposed of or adjudicated. Once rights crystallise the adjudication must be in accordance with

law. In the instant case, the rent was only 1000/- as on the date of filing of the R.C. and the landlady enhanced the rent subsequent to the filing of the R.C. without prejudice to her rights with regard to the eviction petition and, therefore, it cannot be said that the Rent Controller has no jurisdiction.

7. I do not see any illegality or irregularity in the order under revision and the civil revision petition is accordingly dismissed. There shall be no order as to costs. Having regard to the facts and circumstances of the case, the petitioner -tenant is granted 4 months time to vacate and handover the vacant possession of the petition schedule property to the landlady -respondent herein on filing usual undertaking before the Court below within one month from today.

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