

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

+ CIVIL REVISION PETITION No.962 of 2018

Between:

Velugoti Bhaskar Sai Krishna Yachendra,
S/o. Sri Raja Velugoti Venkata Sesha Vardada
Rajagopal Krishna Yachendra

... Petitioner

And

\$ Kalaganda Krishna Murthy, S/o. late Lakshmaiah

.... Respondent

JUDGMENT PRONOUNCED ON **14.06.2023**

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? - Yes -
2. Whether the copies of judgment may be marked to
Law Reporters/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment? - Yes -
-

DR.JUSTICE K. MANMADHA RAO

*** THE HON'BLE DR.JUSTICE K. MANMADHA RAO**

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.... Respondent

! Counsel for the Petitioner : Sri S. Madhava Rao

^Counsel for Respondent: Sri P. Ganga Rami Reddy

<Gist :

>Head Note:

? Cases referred:

1. 2018 SCC OnLine Hyd 2158
2. (2014) 9 Supreme Court Cases 78

THE HON'BLE DR.JUSTICE K. MANMADHA RAO**CIVIL REVISION PETITION No.962 of 2018****ORDER:**

This Civil Revision Petition is preferred against the judgment, dated 18.01.2018 passed in C.M.A.No.19 of 2016 on the file of VII Additional District Judge, Gudur.

2. Brief facts of the case are that the petitioner herein is the defacto administrator of Kasivisweswara Swamy temple and its associate property shown in the schedule and the petitioner is the second son of Raja VVRK Yachendra whose ancestors have built their own above temple. The income derived from the schedule premises is utilized for the activities of the temple and the respondent is tenant of the schedule premises and he made a request to the petitioner to give the schedule premises for rent and the petitioner agreed to let out the same for rent on certain terms and conditions, reduced to writing and the respondent gave an undertaking on a stamped Bond paper dated 29.9.2000 under Rental Kharanama with some terms and conditions and executed the same on 1.10.2000 and took possession of the schedule room for lease and that he has ;not been paid the rents from 1.1.2005 till date in spite of several demands made by the petitioner. The petitioner got issued a registered notice on 15.2.2005 and also marked to the said Kareem Basha and the lease period of the

schedule premises expired on 31.8.2001 and the respondent has committed willful default in paying the rents from 1.4.2004 up to date and the petitioner got issued a registered notice and the respondent got issued reply notice with false allegations. Hence the petitioner preferred I.A No.16 of 2005 in RCC No.3 of 2005 before the Rent Controller-cum-Junior Civil Judge, Venkatagiri (for short "the trial Court"), seeking for eviction of the respondent who is a tenant in the schedule premises on the ground of willful default of the rents and non eviction of the petition schedule premises after lapse of lease period. After careful examination of the entire material available on record, oral and documentary evidence, the trial Court allowed the said I.A. and directed the respondent to pay monthly rents of Rs.250/- from 1.4.2004 till the date of that order. Further, the respondent was directed to vacate the petition schedule premises from the date of that order and also held that if the respondent failed to comply that order, the petitioner is at liberty to proceed against the respondent through process of law. Being not satisfied with the same, the respondent preferred CMA No.19 of 2016 before the VII Additional District Judge, Gudur (for short "the appellate Court").

3. The respondent, who is the petitioner herein, filed counter in the above CMA denying all the allegations made in the petition. The contention of the respondent is that he is not a tenant of

petition schedule premises. It is also stated that no agreement as alleged was executed by the respondent with the conditions set out in the petition and to take possession as on the date of agreement. Therefore the allegations raised in the petition does not arise and hence prayed to dismiss the appeal.

4. Basing the contentions of both parties, the appellate Court has framed the following points for consideration:

- 1) Whether the Rent controller is having jurisdiction to entertain the RCC filed by the petitioner?
- 2) Whether the petitioner is entitled for eviction as prayed for?
- 3) Whether the appeal is maintainable?
- 4) Whether there are any reasons to differ with the findings of the Rent Controller?
- 5) To what relief?

5. Upon considering the material available on record, the appellate Court held that no such objection was raised by the respondents during the pendency of the appeal as such now the objection raised by the other side cannot be taken into consideration. Moreover as already discussed above the petitioner failed to prove that he is landlord of the premises and the respondent is a tenant and the tenant fell in due of arrears of rent. As such the deposit of arrears of rent does not arise. Hence the court holds that the appeal is maintainable and in view of the

above, the appeal was allowed by the appellate Court and set aside the order and decretal order passed by the trial Court in RCC No.3 of 2005 dated 30.11.2010. Challenging the same, the present Civil Revision Petition came to be filed.

6. Heard Sri S. Madhava Rao, learned counsel appearing for the petitioner and Sri P. Ganga Rami Reddy, learned counsel appearing for the respondents.

7. On hearing, learned counsel appearing for the petitioner submits that the appellate Court failed to appreciate the oral and documentary evidence adduced by the petitioner in right perspective and came to wrong conclusion that the petitioner failed to prove that he is the owner of the petition schedule premises and that he let out the same to the respondent and that there exists landlord and tenant relationship between him and the respondent. He further submits that the appellate Court committed grave error in assessing the credibility of Ex.P1 Retnal Khararunama on the ground that there is discrepancy with regard to the date of its execution without noting that PW.1 in his evidence clearly stated that the respondent had executed the Khararunama on 01.10.2000 and that 29.09.2000 is the date of stamp paper on which the Khararunama was written and it is not the date of execution of the Khararunama. He further submits that the appellate Court erroneously observed that in the oral evidence of PWs. 2 and 3

there is no whisper that the contents of the Ex.P1 were read over to the respondent and the Court failed to see that it is for RW.1 to say whether the contents of it were not read over and explained to him or not.

8. Learned counsel for the petitioner further contended that the appellate Court in para-20 of the impugned judgment erroneously came to the conclusion that the documents filed by the petitioner and the evidence of PW.5 would only show that the house bearing No.10-27A belongs to VVRK Yachandra are not helpful to the petitioner to prove that he is the owner of the schedule premises, but the Court did not assess the evidence of PW.5, which is very important to decide the identity of the petition schedule property and to prove that the petitioner is in occupation of the schedule premises as tenant. He further submits that the appealed Court in para-24 of the impugned judgment, referred to the Memo dated 18.2.2000, wherein the respondent admitted that he executed rental Khararunama, but the Court erroneously observed that Ex.P13 is not helpful to the petitioner to prove the relationship of landlord and tenant between the petition and the respondent as the rental agreement was executed on 01.10.2000, whereas the Memo was filed on 18.02.2001, and irrespective of dates of the Kharaurama and the Memo, the admission of the respondent that he executed the Khararunama is crucial to record

a finding that the respondent is tenant in occupation of the petition schedule premises. Hence, the appellate Court in its entire judgment did not give any reasons for reversing the findings recorded by the trial Court. Therefore, learned counsel requests this Court to allow the revision petition.

9. *Per contra*, learned counsel for the respondent submits that the petitioner has no locus standi to file RCC. The petition and Ex.P1 shows that petition schedule shop room is a new construction and so RCC is not maintainable and Rent Controller has no jurisdiction to entertain the petition and the petitioner failed to prove the landlord and tenant relationship between the petitioner and the respondent. However, the trial Court without considering the material on record erroneously ordered eviction and hence the appellate Court has rightly allowed the appeal. Hence prayed to dismiss the present civil revision petition.

10. During hearing, learned counsel for the petitioner has placed reliance on the judgment of High Court of Hyderabad for the State of Telangana and the State of Andhra Pradesh reported in **Shaik Sadiq Ali versus Mohd. Dastagir (died) per L.Rs**¹, wherein it was held that :

“On an examination of the entire facts in this case including the case law cited, this Court is of the opinion that the tenant/appellant has more than in one place admitted that he has taken the premises on

¹ 2018 SCC OnLine Hyd 2158

lease from the first respondent/landlord only. The lease deed which has been filed is of April, 1987. From April, 1987 onwards till the time the alleged dispute was raised by the Wakf Board, the tenant continued to pay rent to the landlord thereby acknowledging that the premises belong to the landlord himself.

The case law that is cited makes it very clear that the tenant cannot deny the landlord's title. Even if the title of the landlord is defective, still the tenant cannot deny the title. In fact, in Mohd. Shafi v. Hafeez Mohammed (died) by LRs.7, learned single Judge clearly held that however defective a landlord's title is, still the tenant cannot contend that the 2008 (2) ALD 49 landlord has no right after it is established that he was paying rent. In that case before the learned single Judge also, the tenant raised a similar objection that the property belongs to the Wakf Board. The contention was negated by the learned single Judge. Similarly, the findings in Suresh Kumar's case (6 supra) and Rita Lal's case (5 supra) are also squarely applicable to the case on hand.....”

11. He also relied upon a decision of Hon’ble Supreme Court reported in **Hindustan Petroleum Corporation Limited Versus Dilbahar Singh**², wherein the Hon’ble Apex Court held that :

“...Rent Control and Eviction – Revision- Powers of Revisional Court- Conferment of power on High Court under provisions of Rent Acts to satisfy itself as to “legality”, “regularity” or “propriety” of decision of appellate authorities or that it is “according to law”- Meaning and scope- Held, consideration or examination of the evidence by the High Court in revisional jurisdiction is confined to find out that finding of facts recorded by the Court/authority below are according to law and do not suffer from any error of law-Whether or not a finding of fact recorded by the subordinate court/tribunal is “according to law” is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice-REvisional court may further examine whether the order impugned before it suffers from procedural illegality or irregularity- View taken in *Rukmini Amma*, (1993) 1 SCC 499, that would “propriety” does not confer power upon High Court to re-appreciate evidence to come to a different conclusion but its consideration of evidence is confined to find out legality, regularity and propriety of the order impugned before it, affirmed- Words and Phrases- “Legality”, “regularity” and “propriety”...

C.Compared with appellate jurisdiction-where both expressions “appeal” and “revision” are employed in a statute, the expression “revision” is meant to convey the idea of a much narrower jurisdiction than that

² (2014) 9 Supreme Court Cases 78

conveyed by expression "appeal"-Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and also of a "revision"-Civil Procedure Code, 1908-S.115-Words and Phrases-"Revision" and "appeal".

12. It is pertinent to mention here that as per Section 116 of the Indian Evidence Act, 1872, reads as under:

116. Estoppel of tenant; and of licensee of person in possession: *No tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given."*

13. As seen from impugned judgment, this Court observed that, according to PW.1, the respondent i.e., the petitioner herein has executed Rental Khararunama on 01.10.2000. But as seen from the Ex.P1 Rental Khararunama, it is dated 29.09.2000. But in the last page of Ex.P1, it contains the signatures of the attestors and the alleged signature of the petitioner with date 01.10.2000. It is also observed that neither P.W.1 nor P.Ws 2 and 3 are able to say why there is a discrepancy in Ex.P1-Rental Khararunama regarding the date. They failed to say as to when exactly the Rental Khararunama was executed. On the other hand, PW.1 categorically admitted that he was not present at the time of Ex.P1. So, he is not competent about the execution of Rental

Khararunama on 1.10.2000 and about execution of Ex.P1 by the petitioner. The respondent did not choose to examine the Scribe of document to explain the discrepancy. The petitioner has denied execution of Ex.P1. This Court further observed that admittedly, the PW.1 was not present at the time of Ex.P1. Moreover, as seen from the Ex.P1, it is in the name of petitioner. Though the respondent deposed that on 15.2.2005 he got issued a registered legal notice demanding eviction of the respondent, no such notice issued by the respondent was filed.

14. This Court observed in the impugned judgment at para-20 that the respondent has executed Rental Khararumana on 01.10.2000. The Rental Khararunama is in the name of the respondent i.e., Velugoti Bhaskara Sai Krishna yachendra. Thus, through Ex.P23, the father of the respondent claims to be the owner of the premises, whereas, the petition was filed by the respondent claiming to be the owner of the premises. It is also observed that Ex.P1 and Ex.P2 are contrary to each other. The respondent filed rejoinder notice dated 25.5.2005 and the same was marked as Ex.P5 which was issued by G.Venkata Muni (PW4) and not by either the respondent or his father. So, Ex.P1 and Ex.P2 are contrary to each other.

15. This Court also noticed in para-21 of the impugned judgment that, in order to prove that the respondent is the owner

of the premises, he filed Exs.P9 to P11 house tax receipts. They are in the name of respondent's father. The respondent herein also filed Ex.P22 Two tax receipts, Ex.P23 tax demand notice, Ex.P24- Original tax receipt and they are in the name of VVVRK Yachendra, the father of the respondent with Door No.10-27/A. But as seen from Ex.P1-Rental Khararunama, no door number was mentioned in Ex.P1. This Court further observed that the respondent examined the Municipal Commissioner as PW.5. According to him, the shop bearing D.No.10-27A stands in the name of VVRK Yachendra. Moreover, no door number was mentioned in Ex.P1 as well as in the petition schedule. Thus, the documents filed by the respondent and the evidence of PW.5 which shows that the house bearing D.No.10-27A belongs to VVRK Yachendra are no way helpful to the petitioner to prove that he is the owner of the premises.

16. On perusing the above discussion, it is pertinent to mention here that the definition under Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, "**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 or receive the rent or be entitled to receive the rent, if the building were let to a tenant.

17. So, in view of the above definition, in the present case, the petitioner is entitled to receive the rents from the respondent.

18. As could be seen from the impugned judgment at para-24, it is observed that the respondent is canvassing that the petitioner admitted that he is a tenant of the respondent by filing suit in O.S No.249/1995. But as seen from ExP12 Certified copy of judgment in O.S No.249/1995, there is no mention that the petitioner admitted about the ownership of the respondent. On the other hand, the petitioner mentioned that he is the owner of the shop room. But in the memo dated 18.2.2000 filed in the suit, he admitted that he executed Rental Khararunama. But the Rental Khararunama basing on which the respondent filed the petition is dated 1.10.200.

18. This Court further observed that, PW.5 in his deposition stated that on the basis of encroachment tax no right will be given to the encroacher over the property. The house tax will be collected from the owner of the property but not from the encroacher. Further, the shop was running by the respondent by the time, since the petition schedule property has been stands in the name of VVRK Yachendra, as such he has been paying the house tax for the property as per municipal records. So, when the

evidence of PW.5 being the Commissioner of Municipality and an official witness having custody of the Panchayat records in respect of the petition schedule property and the ownership particulars, there is no need to look into other contentions raised by the respondent who is having no right or title over the petition schedule property as contended by him. However, for the last 16 years, he has been in possession and enjoyment of the proerpty, if really eh would have been constructed the petition schedule property even by encroaching the Gram Panchayat site, for that there is no any scrap of paper or at least oral evidence to support his contention.

19. Further, as seen from the evidence of RW.1, he categorically admitted that nobody has given permission to him to do his business in the petition schedule premises and carrying out his business, he does not know the said VVRK Yachendra, the father of the petitioner, and also he does not know the petitioner. He has been hearing their names only on the date of giving evidence in the court. Further, he has been residing in Venkatagiri for the last 70 years so the trial Court came to a conclusion that how much of untruth evidence was given in respect of the petitioner and his forefathers. In view of the above discussion, it clearly establishes that the respondent in order to drag on the matter, he took this plea against the petitioner over the petition

schedule property, nevertheless, so far he did not pay the rents from October 2000 by violating the terms and conditions under Ex.P1.

20. Having regard to the facts and circumstances of the case and on perusing the entire material available on record and upon considering the submissions of both the counsels, this Court is of the opinion that the documents filed by the petitioner and evidence of PW.5 would only show that the house bearing D.No.10-27A belongs to VVRK Yachandra are not helpful to the petitioner to prove that he is the owner of the schedule premises. But as seen from the evidence of PW.5, it clearly establishes that the respondent is in occupation of the schedule premises as a tenant. Hence, this Court finds that the appellate court has not given proper reasons for reversing the findings recorded by the trial Court.

21. Therefore, in view of the above discussion, this Court is of the considered view that while setting aside the impugned judgment passed in CMA No.19 of 2016 on the file of the appellate Court, directed the respondent to pay monthly rents as stated by the trial Court in RCC No.3 of 2005.

22. Accordingly, the Civil Revision Petition is allowed. The impugned judgment dated 18.01.2018 passed in CMA No.19 of 2016 on the file of the appellate Court is hereby set aside. Further,

the respondent is directed to pay monthly rents @ Rs.250/- from 01.04.2004 till the date of this order to the credit of RCC No.3 of 2005 and the respondent is also directed to vacate the petition schedule premises within a period of two (02) months from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall also stand closed.

DR.JUSTICE K. MANMADHA RAO

Date: 14. 06.2023.

Note: L R Copy to be marked.

(b/o)Gvl

THE HON'BLE Dr.JUSTICE K. MANMADHA RAO

C.R.P.No.962 of 2018

Date: 14.06.2023.

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