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**(2010) 12 AP CK 0055**

**In the Andhra Pradesh High Court**

**Case No :** L.P.A.132 of 2000 and Cross-Objections (Sr) No. 56383 of 2000

Bandaru Giribabu and Others

APPELLANT

Vs

N.V. Satayanarayana Murthy and Others

RESPONDENT

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**Date of Decision :** 08-12-2010

**Acts Referred:**

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 32B  
Evidence Act, 1872 — Section 116  
Transfer of Property Act, 1882 — Section 106, 111, 116

**Citation :** (2011) 2 ALD 623 : (2011) 2 ALT 546 : (2011) 1 RCR(Rent) 294

**Hon'ble Judges :** N.R.L. Nageswara Rao, J;Goda Raghuram, J

**Bench :** Division Bench

**Advocate :** C.V. Mohan Reddy, for the Appellant; T.V.S. Prabhakhara Rao, J. Prabhakar, M.V. Suresh, Vlnkg Murthy and P. Suresh, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

N.R.L. Nageswara Rao, J.—This Letters Patent Appeal is filed against the judgment of the learned single Judge of this Court in A.S. No. 1370 of 1993 dated 13-12-1999 setting aside the judgment dated 21-05-1993 of the lower court in O.S. No. 123 of 1987 on the file of the court of Subordinate Judge, Rajahmundry. The Appellants are Defendants in the suit.

2. The brief facts relevant for this appeal are as under

3. The suit was filed for recovery of plaint "A" &"B" schedule property which is a cinema hall by name Laxmi Talkies along with the land shown in "A" schedule and the machinery and fixtures contained in "B" schedule property and the same was given on lease to the 1st Defendant from 1960 and it was being extended from time to time. A lease deed was executed on 30-07-1973 under Ex.A-1 by the Plaintiff and Defendant Nos. 2, 3 and 4 and their father late Nidamarthi Surayya for a period of ten (10) years. While the lease was pending, RCC No. 26 of 1978 was filed and subsequently it was withdrawn in view of the non-application of the provisions of Section 32(B) of the Andhra Pradesh Buildings

(Lease, Rent and Eviction) Control Act, 1960 and G.O. Ms. No. 636 dated 27.10.1983. While the rent control proceedings are pending, a notice under Ex.A-2 dated 09-12-1984 was given to the 1st Defendant terminating the lease and a reply was given by the 1st Defendant under Ex.A-6 dated 17-12-1984 contending that the notice is not valid as it was not given on behalf of all the owners. Again the Plaintiff along with Defendant Nos. 2 and 5 issued a notice under Ex.A-4 dated 28-01-1985 terminating the tenancy and asking the 1st Defendant to vacate the premises by 28-02-1985. The suit was filed on 08-06-1987 for recovery of possession.

4. The Defendant Nos. 2 to 5 sailed with the Plaintiff and supported the claim. The 1st Defendant contended that the notice of termination issued by the Plaintiff is not valid and not in accordance with Section 106 of the Transfer of Property Act, 1882 (for short "the Act") and it should have been given on behalf of the all the owners, who are entitled to the property and therefore the suit is not maintainable. The Defendants also raised several pleas about the land belonging to the Endowment Department and entering into some purchase agreements and payment of the consideration. In substance, the 1st Defendant denied the right of the Plaintiff to seek for possession of the property.

5. The lower court after framing necessary issues, and considering the evidence of PW.1 and Exs.A-1 to A-5 and D Ws.1 and 2 and Exs.B-1 to B-7 dismissed the suit on the ground that there was no valid notice of termination of tenancy, since it was not given by all the lessOrs. Aggrieved by the said judgment, the appeal was filed and the learned single Judge of this Court considering the fact that the lease has been terminated by efflux of time, there is no need for issuance of any notice and the possibility of the other persons joining, the issue of notice is not possible since there were some inter se disputes and also found that there was no record of any lease or renewal of lease was granted by any act of parties and there is also no evidence to show that any rents were accepted subsequent to the expiry of the lease period by the end of July 1983 or conferring statutory protection and placing reliance on the decisions reported in M. Vijayalaxmi Vs.G. Goverdhan Reddy 1996 (3) ALT 32 , M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property, and Farahat Ali (died) Per L.Rs. Vs. Sajid Ali and Others, that learned single Judge found that it is not necessary to go into the correctness of the notice as there is no applicability of Section 106 of the Act and accordingly allowed the appeal. Aggrieved by the said judgment, the present LPA is filed.

1 The points that arise for consideration are:

2 Whether the Appellants are tenants holding over and entitled to the protection of valid notice u/s 106 of the Act?

3 If so, the suit is bad and no decree for possession can be granted?

4 To what relief?

POINTS:

6. The fact that Defendant No. 1 was the tenant of the demised premises is not in dispute. He continued to pay the rents during the subsistence of the lease and there was a registered lease deed (Ex.A-1). In the written statement and in the evidence, an effort was sought to be made that the Plaintiff is not the real owner of the property. As provided u/s 116 of the Indian Evidence Act, 1872, the 1st Defendant having accepted the tenancy and executed Ex.A-1 cannot deny the title of the lessors. Therefore, we are not concerned with the developments pleaded by the Defendants with regard to the title of the property subsequent to lease period.

7. The learned Counsel for the Appellants strongly rely upon the fact that in the plaint the first Defendant was described as a tenant-holding over and thereby u/s 116 of the Act, he is entitled for a valid notice u/s 106 of the Act and inasmuch as the notice was not given on behalf of all the lessors, the appeal should have been dismissed. It was further pleaded that the single judge has not considered the case of the Appellants as tenants holding over.

8. The learned Counsel for the Respondents contends that the description of the Appellants as a tenant-holding over is by mistake of parties and by applying the requirements of Section 116 of the Act, the Appellant does not fit in with the status of tenant-holding over.

9. In fact it is to be noted that in the trial court the tenant had taken a plea in the written statement, which will be useful, to extract, for better determination of the contentions of the counsel for the Appellants. In Para.7 of the written statement, it was averred as under:

The allegations in para 10 and 11 are false. This Defendant is as stated above a statutory tenant after the expiry of the lease and there is no question of holding over or determination of the lease by the Plaintiff or other Defendants. The notices dated 09-12-1984 and 29-01-1985 have been properly answered and they cannot have the effect of determination the lease at the volition of the Plaintiff or the other Defendants. The notices are invalid and illegal under law and they have no force or effect.

10. In para.13 of the written statement it was averred as under:

There is no question of any damages for use and occupation. This Plaintiff and 2nd Defendant appeared in the writ petition No. 195 of 1986 and obtained an order on 14-02-1986 in the following terms:

The Petitioner (this Defendant) shall pay the entire arrears of rent by way of Bank demand draft within two weeks from today (14.2.06) in favour of the 3rd Respondent ( the 2nd Defendant herein). The Petitioner shall continue to pay the rents every month....

11. This Defendant paid a sum of Rs. 48,000/- to the 2nd Defendant in pursuance of the High Court order by Demand Draft dated 27-02-1986 and had been paying the rent amount of Rs. 4,000/- to him every month till

January, 1987".

12. A tenancy is created by consent of the parties or conduct of the parties. When the tenant himself denies the status as a tenant-holding over and payment of the rents only long after the lease period expired by efflux of time, it clearly goes to show that he is not a contracting party for the continuation of tenancy. Section 116 of the Act reads as under:

Section 116 of the T.P. Act:

Effect of holding over

If a lessee or underlessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or underlessee or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 116.

Therefore, if the tenant is claiming the benefit u/s 116 of the Act, he has to show that by conduct or otherwise, he was willing to be the tenant and the landlord had assented to him to continue the possession of the property and he was paying the rents after the period of tenancy. In this case, none of the requirements are met since the Appellant himself is not treating himself as a tenant-holding over and the rents were paid long after the expiry of the tenancy by efflux of time and none of the lessors accepted the rents. Therefore, the basic requirements of the benefit u/s 116 of the Act are wanting.

So far as the validity of the notice u/s 106 of the Act is concerned when once Section 116 of the Act is not available as a benefit to the Appellant, naturally by virtue of the efflux of time of the lease, the lease automatically terminates and the learned single Judge has referred to the decisions supra which are not disputable holding that no notice u/s 106 is needed as it will be a case of tenant by sufferance.

13. Further if the contentions of the Appellants are to be accepted that there is no proper notice of terminating tenancy on behalf of all lessors which was also considered by the learned single Judge about the impossibility, because of the disputes, as rightly contended by the counsel for the Respondents, the converse has also be taken into consideration that when all the landlords have not assented for the continuation of the lease after efflux of time, no fresh lease is created u/s 116 of the Act. Evidently, even before the institution of the suit, rent control proceedings were instituted and the landlord was not interested in continuation of the possession of the property by the Defendants and there was no acceptance of the rents and thereby there is no status of tenant holding over.

14. In this connection, it is useful to refer to a decision reported in Smt. Shanti Devi v. Amal Kumar Banerjee AIR 1981 SC 1550 relied upon by the counsel for the Respondents. In para.5 of the said judgment, it was observed as under:

Undoubtedly, Section 111(a) of the Transfer of Property Act, which deals with determination of a lease by efflux of time, has to be read with Section 116 of the Act. But in the present case there is no allegation by the Defendant that he was a tenant holding over within the meaning of Section 116 of the Act. Now, in order that a lease should be deemed to have been continued in favour of the Defendant it was necessary to show that he remained in possession of the premises demised after the determination of the lease granted to him and the Plaintiff had expressly or by necessary implication assented to his continued possession. There being no such plea of holding over, the matter falls to be governed by Section 111(a) of the Act. If the period of lease had expired on January 10, 1970, the relationship of landlord and tenant ceased and the Defendant became a trespasser. In the present case, the Respondent who was the Defendant, in Ground No. 6 of his memorandum of appeal before the High Court urged that the courts below should have held on the basis of the Plaintiff's case read with the lease deed that the lease would expire on January,10,1970. There was therefore, no question of service of any notice u/s 106 of the Transfer of Property Act.

15. So far as the right to initiate the suit for eviction by some of the co-owners is concerned, who are also protected under rent Act, it is useful to refer to a decision reported in Kanta Goel Vs. B.P. Pathak and Others, whereunder the Supreme Court held as under:

Where a landlord who had let out his premises to a tenant, dies and his heirs succeed to his estate, one co-heir to whom the rent is being paid by the tenant and who receives it on behalf of the estate, would be landlord for purposes of the Act. The Co-heirs constituted the body of landlords and, by consent, implicit or otherwise, of the plurality of landlords, one of them representing them all, was collecting rent. In short, he functioned, for all practical purposes as the landlord and was therefore entitled to instituted proceedings for eviction against the tenant qua landlord.

16. In this case, the other co-owners did not oppose the suit and filed a written statement supporting the claim of the Plaintiff. The question of their subsequent change of attitude is irrelevant. The above decisions while referring to an earlier judgment of the Supreme Court the question when the other co-owners do not cooperate for the suit, the maintainability of such suit was left open to be answered.

17. In the premise of what has been stated above, the Defendant No. 1 cannot be a tenant holding over either by conduct and by non-acceptance of the tenancy by the landlords and by virtue of the tenant disowning the status as a tenant holding over in the written statement and not paying the rents willingly for several months after the lease expired by efflux of time, the Appellant cannot take shelter for a notice u/s 106 of the Act or for a protection as statutory tenant, since the rent Act is not applicable. The Appellants are only tenants by sufferance and consequently we hold that the judgment under appeal does not

call for any interference and accordingly the LPA is liable to be dismissed. Accordingly, the points are answered.

18. Though some cross-objections were filed by some of the Respondents with regard to rent, but they were not yet been numbered and therefore, they are at liberty to proceed in execution for recovery of the rent due to them.

19. Therefore, LPA is dismissed with costs and Cross-objections are ordered accordingly.