

(1970) 10 AP CK 0005

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1874 of 1969

Bhagvatula Pullayya

APPELLANT

Vs

M. Anandam Chetti

RESPONDENT

Date of Decision : 23-10-1970

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 10(3), 20, 21
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Citation : AIR 1978 AP 66

Hon'ble Judges : Chinnappa Reddi, J

Bench : Single Bench

Advocate : A.V. Krishnarao and T. Seshagiri Rao, for the Appellant; T. Ramachandra Rao and S.V.K.S Rangaswamy Iyyangar, for the Respondent

Judgement

1. The respondent is the landlord of premises bearing door No. 327 in Gandhi Road, Tirupathi. He filed a petition for eviction of his tenant, the petitioner herein. under the provisions of Sections 10(2)(I), 10(2)(ii), 10(3)(a) and 10(3)(b) of Andhra Pradesh Act 15 of 1960. He claimed to be put in possession on the several grounds mentioned in those provisions. Every one of the grounds raised by the landlord was contested by the tenant, who, in addition, claimed that the petition for eviction was liable to be dismissed as no maintenance as he had not been given any notice as he had not been given any notice to quit in accordance with the provisions of Section 106 of the Transfer of Property Act before filing of the petition for eviction. The Rent Controller held every one of the grounds on which the petition for eviction was based in favour of the landlord but nonetheless dismissed the petition as not maintainable on the ground that there was no prior notice to quit.

The Rent Controller did not, however, award any costs but stated no reasons for not awarding costs. The landlord preferred an appeal to the appellate authority. Following a judgment of a Division Bench of this court, the appellate authority held that prior notice to quit was not necessary, The petitioner-tenant who was

the respondent before the appellate authority, wanted to sustain the order of dismissal by the Rent Controller on merits, that is, on grounds which had been decided against him by the Rent Controller. The appellate authority did not permit him to do so on the ground that if the petitioner felt aggrieved by the adverse findings given by the Rent Controller, he should have preferred an appeal and in the absence of such an appeal he could not be allowed to question the finding in the appeal preferred by the opposite party. The appellate authority, therefore, allowed the appeal and order eviction.

2. In this revision, Sri A. V. Krishanrao, learned counsel for the petitioner, contended that both on general principles and on the application of O. 41, Rs. 22, the petitioner had the right to seek to sustain the order of the Rent Controller before the appellate authority on points decided against him by the Rent Controller. He relied on the decisions in *Seetaram and Others Vs. Smt. Ramabai and Another*, and *Hari Kishan Singh v B. Narayana*. (1969) 2 APLJ 290.

3. On the other hand Sri S. V. K. S. Rangaswami Iyengar, learned counsel for the respondent, contended that the finding of the Rent Controller on each of the grounds raised in the petition for eviction was by itself an order against which the petitioner could have preferred an appeal; at any rate, the petitioner could have preferred an appeal against the refusal to award him costs. The failure of the petitioner to prefer an appeal made the findings final. The findings would operate as *res judicata* in a subsequent proceedings and the correctness of the findings could not be canvassed in an appeal preferred by the opposite party in the same proceeding. The learned counsel relied on the decisions in *In re Bhogireddi Nagaraju* (1969) 1 APLJ 157 & *Bansilal Patwa v. Lakshminarayan*. (1969) 1 APLJ 408. The provisions of the Andhra Pradesh Buildings (Lease Rent and Eviction) Control Act which are relevant for the purposes of this case are Sections 10, 20 and 21.

Under Section 10 (1) of the Act a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of Sections 10, 12 and 13. Under S. 10 (2) a landlord seeking to evict a tenant is enabled to apply to the Controller for a direction in that behalf on any of the grounds mentioned in the several clauses of that sub-section. If the Controller is satisfied that any of the grounds exist, he shall make an order directing the tenant to put the landlord in possession of the building. If the Controller is not satisfied he shall make an order rejecting the application. Section 10 (3) enables the landlord to apply to the Controller for an order directing the tenant to put the landlord in possession of a building which is required by him subject to the conditions mentioned in the sub-section. If the Controller is satisfied with the claim of the landlord as *bona fide* he may make an order directing the tenant to put the landlord in possession of the building and if the Controller is not satisfied he shall make an order rejecting the application. It is, therefore, seen that the Controller may pass two kinds of orders. one an order rejecting an application and the other, an order directing the tenant to put the landlord in possession.

Section 10 (2) and 10 (3) do not contemplated any other type of order.

Section 20 provides for appeals by persons aggrieved to the Chief Judge, Small Causes Court in the cities of Hyderabad and Secunderabad and elsewhere, to the principle Subordinate Judge having jurisdiction against orders passed by the Controller. Since the only orders which may be passed by the Controller in applications coming under Sec. 10 (2) and Section 10 (3) are orders rejecting the applications or orders directing the tenant to put the landlord in possession, it follows that appeals are competent only against such orders and not against mere findings. The order passed in the application to the Controller in the present case was one rejecting the application. Therefore, the landlord was competent to file an appeal to the Subordinate Judge. There was no order against the tenant directing him to put the landlord in possession and therefore, he was not competent to prefer an appeal to the Subordinate Judge.

Section 21 of the Act provides for the award of costs in proceedings before the Controller or the appellate authority in the discretion of the Controller and the appellate authority. The explanation to Section 21 provides that the appellate authority may set aside and very any order passed by the Controller in regard to costs of the proceedings before the Controller. The explanation to Section 21 seems to invest the appellate authority, in exercise of its appellate jurisdiction, with power to interfere with orders of the Controller in regard to costs, hat is to say, it appears to invest the appellate authority with power to interfere with orders made by the Controller in regard to costs where appeals are brought before the appellate authority against orders of the Controller. The explanation seems to be merely an amplification of the power of the appellate authority and does not appear to give a right to a party to prefer an appeal against an order relating to costs only.

I was however, told by the learned counsel at the time of hearing of the Civil Revision Petition that Division Bench of this court has held that under the provisions of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, an appeal law on the question of costs simpliciter. The case was not cited before me and though I am not satisfied that an appeal lies against an order relating to costs simpliciter I will proceed on the assumption that an appeal does so lie. Assuming that the petitioner could have preferred an appeal because the Rent Controller had refused to allow him costs could the petitioner have canvassed the correctness of the findings of the Controller on the grounds raised in the petition for eviction. The Controller did not say that he was disallowing costs to the petitioner because he had given findings against the petitioner on the merits of the case. If he had so stated perhaps the petitioner could have canvassed the findings before the appellate authority in an appeal preferred against the order relating to costs. But since the Controller did not state any such reasons the for disallowing costs I am of opinion that the petitioner could not have canvassed the findings against him by preferring an appeal against the order disallowing costs to him.

4. According to the learned counsel for the petitioner on general principles it was open to the respondent in an appeal to sustain the order of the first court before the appellate authority on grounds on which the first court had decided against him. The decision of Hidayatullah, C. J., and Tare, J., in AIR 1958 Madh Pra 221 fully supports the contention of the learned counsel. In that case the landlord filed an application before the Rent Controller under the provisions of the C. P. and Berar Letting of Houses and Rent Control Order for permission to terminate the tenancy on three grounds. The Rent Controller did not accept two of the grounds but granted permission on the third ground. The tenant preferred an appeal to the appellate authority. The landlord also wanted to urge before the appellate authority the grounds not accepted by the Rent Controller. The appellate authority refused to permit him to do so and reversing the order of the Rent Controller on the third ground dismissed the petition for permission. The landlord filed a Civil Revision Petition in the High Court. Clause 21 of the C. P. & Berar Letting of Houses and Rent Control Order provided for an appeal to the appellate authority by any person aggrieved by an order of the Controller. Construing the words "any person aggrieved by an order of the Controller" it was observe by the learned Judges as follows:---

"The clause to which we have referred does not say that any person aggrieved may appeal to the Deputy Commissioner. It says that any person aggrieved "by an order" of the Controller may prefer an appeal. When the order was in favour of the landlords they were not aggrieved by the order. To borrow the language of their Lordships of the Privy Council in (1931) LXI MLJ 367 (Privy Council) there was no reason why the landlords should appeal from the order which the Rent Controller had made, there was every reason why they should be satisfied therewith.

A right of appeal is conferred to get an order set aside or out of the way. Even if a person has a grievance against a finding he cannot come by way of appeal unless he challenges the order itself and wants to get it interfered with. Unless we hold this way, even if the order less we hold this way, even if the order is entirely in favour of a party he would be required to file an appeal against a finding if the other side were to appeal against the order as it is. In our opinion, the landlords here had every reason to be satisfied with the order, and they need not have appealed."

Dealing next with the question whether the petitioner had a right to urge before the appellate authority the grounds on which he had failed before the Controller the learned Judges observed as follows:-

"The learned counsel for the petitioners sought the analogy of Order 41, Rule 22 of the CPC and wanted to apply it on the strength of Section 141 of the Code. In our opinion without having to decide whether Order 41. Rule 22 of the CPC applies or not to rent control proceedings and appeals arising therefrom we are quite satisfied that on general principles a party who has an order in its favour is entitled to show that the order is justified on some ground which was decided

against it in the court below."

5. Sri A. V. Krishnarao also urged that the provisions of Order 41, Rule 22 were also applicable to the case. In 1969 2 APLJ 290. Kuppuswami, J., speaking for the Division Bench observed:---

"We are inclined to agree with the view that the provisions of the Civil P. C. would as far as possible be applied to the proceedings under the Rent Control Act, in case where adequate provision is not made in the Act or in rules and provided that the provisions sought to be applied are not inconsistent with any express provision of the Act or with the scheme and purposes of the enactment."

6. I am of opinion, that the provisions of Order 41, Rule 22, Civil P. C. are not inconsistent with any of the provisions of the Act and are, therefore, applicable to proceeding before the appellate authority under the Act.

7. The petitioner, therefore, was entitled, both on general principles and on the application of Order 41, Rule 22 to sustain the order of the Rent controller before the Appellate Authority on the grounds decided against him by the Rent Controller.

8. The decisions in 1969 1 APLJ 157 and 1969 1 APLJ 408 are not of any assistance to the respondent. In those cases Parthasarathi. J., and Sambasivarao, J., considered the question whether a party who succeeded in the trial court could prefer an appeal against adverse findings. The learned Judges held that such a party could prefer an appeal provided the adverse finding was implied in the decree though not formally expressed in the decree. Sambasivarao, J., observed that an appeal would lie if the finding would otherwise operate as res judicata in a subsequent proceedings. I am not concerned with such a situation in the present case nor were the learned judges considering the question whether a party could sustain a decree in his favour by challenging the adverse finding in the appeal preferred by the opposite party against a decree. Order 41, Rule 22 is clear that a party may sustain a decree even without preferring cross objections. In Run Bahadur Singh v. Lucho Koer (1884) ILR 11 Cal 301 (PC) the appellant had appealed to the Privy Council against the decree of the High Court. The respondent preferred a cross appeal against certain findings recorded in the judgment of the High Court. Their Lordships observed:

"It was unnecessary for her to do so. inasmuch as those findings could not be subsequently held to be conclusive against her, because the decree of the court below was not based upon any such finding but in spite of it."

9. In Midnapur Zamindari Co. Ltd. v. Naresh Narayana Roy ILR 48 Cal 460 : AIR 1922 PC 241. A Zamindari sued for possession and in answer the tenants pleaded firstly that they had occupancy rights and secondly the suit was premature as there was no settlement of fresh rent. The lower court dismissed the suit on the ground that the suit was premature but it gave a finding that the

tenants had no occupancy rights. The Zamindary appealed to the High Court and the tenants filed a cross appeal against the finding that they had no occupancy rights. The High Court affirmed the decree of the trial court on the ground that the suit was premature. It also affirmed the finding that the tenants had no occupancy rights.

Their Lordships of the Privy Council held that the finding on the question of occupancy rights would not support an actual plea of res judicata in subsequent proceedings as the defendants having succeeded on the plea that the suit was premature had no occasion to go further as to the finding against them. In the present case, the findings adverse to the petitioner were neither implicit in the order of the Rent Controller rejecting the application for eviction, nor could such findings operate as res judicata in subsequent proceedings. I, therefore, hold that there is no substance in the submissions advanced by the learned counsel for the respondent.

10. In the result, the Civil Revision Petition is allowed. The order of the Subordinate Judge of Chittoor is set aside. The matter is remanded to the learned Subordinate Judge who is directed to dispose of the matter afresh in the light of what has been said in this case. The petitioner will get his costs.

11. Petition allowed.