
(2005) 08 AP CK 0032

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 3695 and 4257 of 1997

Cherukuri Seshadri

APPELLANT

Vs

Veeramallu Koteswara Rao (died) per LRs.

RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 10(8), 12, 2

Citation : (2005) 6 ALD 23 : (2005) 5 ALT 474

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : P. Phalguna Rao, for the Appellant; K. Rama Koteswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Cherukuri Seshadri, the tenant-the 1st respondent in R.C.C.No. 1/91 on the file of Rent Controller-cum-Principal District Munsiff, Bapatla, filed C.R.P.No.3695/97, as against the order made in R.C.A.No.2/93 on the file of learned Subordinate Judge-cum-Appellate Authority at Bapatla, whereunder eviction was ordered on the ground of mala fide denial of title though the other grounds had been negatived even by the Appellate Authority. Landlord, the petitioner in R.C.C.No. 1/91, being aggrieved of negativing the reliefs on other grounds under Sections 10 and 12 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (herein-in-after, in short, referred to as "the Act for the purpose of convenience), preferred C.R.P.No. 4257/97. The 2nd respondent in R.C.C.No. 1/91, Bodaraju Venkatappayya Sarma, and also Veeramallu Koteswar Rao, being no more, the legal representatives were brought on record in C.R.P.No.13695/97 and R.C.A.No.12/93 on the file of Appellate Authority, respectively, in relation to Veeramallu Koteswara Rao and Bodaraju Venkatappayya Sarma.

2. The facts in brief are as hereunder:

Veeramallu Koteswar Rao, the landlord, filed R.C.C.No. 1/91 on the file of the learned Rent Controller-cum-Principal District Munsiff, Bapatla, praying for eviction of Cherukuri Seshadri-R-1. in the said R.C.C., under Sections 10 and 12 of the Act.

The case of the landlord in nutshell is that the petition schedule house originally belonging to Bodaraju Venkatappayya Sarma, the 2nd respondent in R.C.C.No. 1/91, shown as R-2 in R.C.A.No. 2/93, who died pending appeal and respondents 3 to 5 therein were added as legal representatives in I.A.No. 140/95, let-out the entire house to the landlord and with his consent and knowledge, the landlord had let-out the northern half portion to the tenant Cherukuri Seshadri (for the purpose of convenience referred to as "tenant") and Veeramallu Koteswar Rao (hereinafter referred to as "landlord") had been occupying the southern half and let-out the northern half to the said tenant. Thus, the landlord alone had been collecting the rents, since the owner was employed elsewhere and living at a place other than Bapatla. It is also the case of the landlord that he entered into a contract of sale for the entire house for a consideration of Rs. 26,000 and a duly stamped agreement was executed on 2-5-1982 and the entire consideration was paid to the owner. While so, when the sale deed was about to be taken, the tenant filed O.S.No. 44/82 on the file of Subordinate Judge, Bapatla, for the relief of specific performance of an alleged contract of sale between him and the original owner and the landlord herein got himself impleaded in the said suit and the suit was dismissed and the matter was carried by way of Appeal A.S.No. 90/88 on the file of District Judge, Guntur and the same was dismissed and by the date of filing of the R.C.C., Second Appeal No. 386/90 was pending on the file of this Court. But however, at present, the same also is not pending and the Second Appeal had been dismissed. It is also stated that R.C.C.No. 7/82 was filed by the tenant as against the original owner only for deposit or rents, but however, it was pleaded therein that he used to pay rents to the landlord, as nominee of the original owner. The pleadings in O.S.No. 44/82 also had been referred to and it is stated that it is not known whether the tenant is depositing the rents into Court in R.C.C.No.7/82. Specific stand was taken that inasmuch as the landlord had been receiving rents to the knowledge of the tenant and with the express consent of the original owner, he would fall within the definition of the landlord under the Act and there is deliberate denial of title of the landlord though the tenant has knowledge about the payment of rents to the landlord and subsequent thereto, the agreement of sale being executed in his favour. The grounds of wilful default, bona fide personal accommodation and requirement for alterations by reconstruction also had been pleaded.

The tenant-1st respondent in the aforesaid R.C.C. denied the allegations and further pleaded, as hereunder:

"The tenant is a contractor and the petitioner is a school teacher. It was not convenient to the tenant to send the rent for himself. Hence, the tenant used to entrust his rent to the petitioner to send it to the 2nd respondent along with

Money Order charges. Therefore, it is false to allege that the petitioner sublet the northern portion to the tenant and he used to collect the rents etc. The tenant and the petitioner are very amicable and friendly with each other for some time. The petitioner encouraged the tenant to purchase the schedule house. Hence, the tenant entered into an agreement to purchase the schedule house from the 2nd respondent for Rs. 25,000 and paid the advance to the 2nd respondent and this has taken place to the knowledge of the petitioner himself. The 2nd respondent entered into the said agreement to sell the petition schedule house on 22-4-1981. Subsequently, the 2nd respondent came to Bapatla on the request of the tenant to complete the sale transaction. At that time, it was transpired that one woman was occupying a portion of the schedule site and the tenant requested the 2nd respondent having admitted the encroachment of the said woman, refused to get her vacated and the 2nd respondent picked up quarrel and went away without completing the sale transaction even though the tenant is ready and willing to perform his part of the contract. This happened to the knowledge of the petitioner. The tenant continued his correspondence with the 2nd respondent and got issued a registered notice also through his lawyer etc., to the knowledge of the petitioner. In the meanwhile, there were misunderstanding between the tenant's family towards the 2nd respondent. Therefore, the tenant was compelled to file the suit O.S.No. 44/82 on the file of Sub Court, Bapatla. Hence, it is preposterous and absurd to state that the petitioner entered into a contract of sale with the 2nd respondent to purchase the schedule house. The petitioner and the 2nd respondent has conspired and colluded to cause loss to the tenant. It is false to state that the petitioner purchased the house and paid the consideration and obtained a contract of sale. The said contract of sale is ante-dated and no consideration was paid. The petitioner has no capacity to purchase the said house. The alleged contract was brought into existence only to defeat the right of the tenant. The tenant filed a petition in R.C.C.No.7/82 to permit him to deposit the rent into Court and the same was allowed. The petitioner filed a petition in the said case to implead him as a party but it was dismissed. The tenant ever since the date of the said petition has been depositing the rent regularly into that case. The petitioner is fully aware of the same. It is quite absurd to alleged that the tenant committed default in payment of rent. This allegation was trotted out for the purpose of filing this petition. The petitioner's allegation that he is the landlord to the tenant is most mischievous, false and absurd. Really and factually speaking, the tenant is the landlord of the petitioner. Therefore, the petitioner has no locus standi to file this petition and hence, liable to be dismissed in limini. The petitioner has successfully took the law into his hands and engaged unruly elements to high-handedly dispossess the tenant's, son and attempting to murder him etc., and in that connection, there are criminal cases pending against the petitioner."

The original owner, shown as 2nd respondent in the aforesaid R.C.C., filed a counter virtually supporting the stand taken by the landlord. The original owner Bodaraju Venkatappayya Sarma specially admitted expressly authorising the

landlord to receive the rents and also the agreement of sale in his favour and the receipt of consideration. Inasmuch as, the original owner had supported the stand taken by the landlord in toto, the averments in the counter need not be referred to in detail.

3. The landlord examined himself as P.W.1 and further examined P.Ws.2 and 3 and the tenant examined himself as R.W.1 and examined R.W.2, R.W.3 and R.W.4. Exs.A-1 to A-15 and Exs.B-1 and B-2 were marked.

4. On appreciation of the evidence available on record, the learned Rent Controller dismissed the petition holding that the landlord is not entitled for eviction of the tenant on the grounds of bona fide personal requirement and wilful default. Aggrieved by the same, the landlord preferred R.C.A. No. 2/93 wherein the said R.C.A. was allowed only on the ground of mala fide denial of title. Hence, the present C.R.P.

5. Sri P. Phalguna Rao, the Counsel representing the tenant, made the following submissions:

The learned Counsel would maintain that the learned Rent Controller had appreciated the evidence available on record and came to the correct conclusion and the reversal on the ground of denial of title cannot be sustained. The learned Counsel would maintain that the remedy will be available to the original owner—the original landlord and definitely not to Veeramalla Koteswar Rao since it cannot be said that he falls within the definition of landlord under the Act. The learned Counsel also would maintain that, no doubt, tenant was unsuccessful in the suit for specific performance, but however, that will not alter the situation, especially, in the light of the fact that the original owner was not examined at all to prove either Ex.A-6 or to establish the agreement of sale said to have been executed in favour of the present landlord. Even otherwise, the denial of title is bona fide and definitely, the remedy is not by way of eviction petition under the Act. The learned Counsel also made certain submissions on merits and demerits of the matter and concurrent findings, which had been recorded in relation to the other grounds taken under Sections 10 and 12 of the Act.

6. Sri Rama Koteswar Rao, the learned Counsel representing the legal representatives of the landlord made the following submissions:

The non-examination of the original owner would not alter the situation in any way in the light of the stand taken by the tenant himself in Ex.A-2 and in view of the contents of the letter-Ex.A-6. The learned Counsel would contend that in the light of the specific stand taken by the original owner even in the pleading before the learned Rent Controller and also in the light of Ex.A-6, the stand of the original owner is clear and categorical to the effect that the landlord who filed the present eviction petition alone had been collecting rents, as authorized by him, even from the beginning and subsequent thereto by virtue of the agreement the landlord continued to be in possession of the said property and by virtue of the same, the landlord is entitled to maintain the eviction petition. The learned

counsel for landlord also would contend that it is not as though the tenant had no knowledge about these aspects and despite the same, such stand was taken knowing fully well that the landlord is the landlord in relation to the premises in question under the provisions of the Act. Hence, the denial of the relationship itself would amount to the denial of title, which is definitely mala fide, especially, in the light of the proceedings commencing from O.S.No. 44/82, A.S.No. 90/88 and ultimately, S.A. No,386/90. The Counsel also pointed out that all these parties are also parties to the said civil proceedings and hence, in any view of the matter, it cannot be said that the stand taken by the tenant is a bona fide stand and hence, the order of eviction made by the Appellate Authority is well justified. The learned Counsel also made a serious attempt to canvass before this Court that the findings recorded in relation to the other grounds both, under Sections 10 and 12 of the Act, cannot be sustained and the learned Counsel had taken this Court through the evidence available on record and the findings recorded in relation thereto.

7. Heard the Counsel on record and perused the oral and documentary evidence available on record and the findings recorded by the learned Rent Controller and also the Appellate Authority.

8. The evidence of P.W.1 is clear and categorical to the effect that he had taken the premises from the original owner and let out a portion to the tenant, no doubt, with the consent of the original owner and he had been collecting the rents as the nominee of the original owner from the beginning and subsequent thereto, by virtue of an agreement of sale, he continued to be in possession and had been collecting rents. When the original owner was about to execute the document, the tenant had set the law into motion by instituting a suit O.S.No. 44/82 on the file of Subordinate Judge, Bapatla, claiming the relief of specific performance which had been negated and the Judgment and Decree therein had been confirmed even in A.S.No. 90/88 and in S.A.No. 386/90. It is not in serious controversy that these parties are parties to the said proceedings. The tenant filed R.C.C.No. 7/82 and a copy of the petition in the said R.C.C.No. 7/82 was marked as Ex.A-2. In the said petition, it was specifically pleaded by the tenant that he used to pay rents to Veeramalla Koteswar Rao, the nominee of the respondent therein-Bodaraju Venkatappayya Sarma, the original owner. Apart from this aspect of the matter, Ex.A-6 is the letter addressed to the landlord by the original owner wherein he had referred to the proceedings O.S.No. 44/82, A.S.No. 90/88 and S.A.No. 386/90 and also R.C.C.No. 7/82 and also specified that because of the said litigation O.S.No. 44/82, the document could not be registered and authorized the landlord to take all necessary steps inclusive of the collection of rents and also to initiate action in relation to eviction or any other appropriate reliefs. This document had been attacked on the ground that the same was not proved since the author of the letter Bodaraju Venkatappayya Sarma was not examined. In the light of the specific stand taken by Bodaraju Venkatappayya Sarma in the counter filed in the R.C.C. and also in the light of the judicial proceedings O.S.No. 44/82 and in the light of R.C.C.No.

7/82, the non-examination of Bodaraju Venkatappayya Sarma will not alter the situation, in any way, since the stand of the tenant is that Bodaraju Venkatappayya Sarma was sailing with the landlord for the purpose of throwing him out. It is pertinent to note that the tenant thought of a false suit O.S.No. 44/82 and ultimately he was unsuccessful. Ex.A-1 is a certified copy of the Judgment in O.S.No. 44/82; Ex.A-3 is the office copy of notice, dated 9-10-1990; Ex.A-4 is the reply notice dated 21-10-1990; Ex.A-5 is the notice, dated 2-12-1990; Exs.A-7 and A-8 are the depositions of Cherukuri Seshadri in O.S.No. 75/84 wherein admissions were made relating to the payment of rent to the landlord; Ex.A-9 is the served copy of plaint in O.S.No. 75/84 on the file of District Munsiff, Bapatla; Ex.A-10 is the deposition; Exs.A-11, A-12 and A-13 are the relevant portions of the deposition of P.W.1; Ex.A-14 is the deposition of P.W.2 in O.S.No. 75/84; and Ex.A-15 is the relevant portion thereof. The evidence of P.Ws.1 to 3 is also available on record. R.W.1 the tenant was examined who deposed about all the judicial proceedings. R.W.2, R.W.3 and R.W.4 also were examined. Ex.B-1 is a certified copy of the Order in I.A.No. 132/85 in R.C.C.No. 7/82; and Ex.B-2 is the certified copy of the Judgment in O.S.No. 75/84. It is true that the application filed by the present landlord in R.C.C.No. 7/82 was dismissed and for that purpose Ex.B-1 was marked. A suit for perpetual injunction to prevent the nuisance had been decreed and the certified copy of the same is Ex.B-2.

9. These are all judicial proceedings and there cannot be any dispute or controversy relating to the same. Though a serious attempt was made to convince this Court that the other grounds also were available, in view of the fact that concurrent findings had been recorded, this Court is not inclined to go into those aspects in view of the limitations of this Court while exercising the revisional jurisdiction. Reliance was placed on *Vijay Singh v. Vijayalakshmi Ammal*, 1997 (1) RCR 177 . wherein the Apex Court while dealing with the aspect of demolition and reconstruction under Tamil Nadu Building (Lease and Rent Control) Act, 1960, held where the landlord required building for demolition and reconstruction, it is not necessary that building should be in dilapidated or dangerous for human habitation. In *Adikari Rangarao v. Byreddi Tulasamma*, 2004 (1) An.W.R. 297. where the denial of title of the landlord by the tenant is not bona fide, the findings of the Courts below to be confirmed. Section 2(vi) of the Act defines "landlord" as "in this Act, unless the context otherwise requires, "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, execution; administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant.

Explanation: A tenant who sub-lets a building shall be deemed to be a landlord within the meaning of this Act in relation to the sub-tenant."

10. In the light of the aforesaid definition of "landlord", there is clear evidence of

P.W.1 and specific stand was taken even by the original owner that the whole premises was taken by the landlord and a portion was let-out to the tenant by the landlord and in the light of the Explanation and also in the light of the definition of the landlord in Section 2(vi) of the Act, inasmuch as from the beginning the landlord alone had been receiving rents and also subsequent thereto, an agreement of sale also had been executed in his favour, he would fall within the definition of "landlord" and it is within the knowledge of the tenant. It is also pertinent to note that the same stand had been taken even by the tenant in R.C.C.No. 7/82, marked as Ex.A-2. Apart from this aspect of the matter, the tenant was unsuccessful in the litigation commenced by him for the relief of specific performance as against the original owner and all these parties were parties to those proceedings also. Hence, the tenant having clear knowledge about the present landlord giving a portion to him, collecting rents from the beginning with the express consent of the original owner and having knowledge about all the aspects had specifically denied the title of the landlord knowing fully well that he is the landlord for the purposes of the Act. Apart from it, he had initiated some action as against the original owner only by filing R.C.C.No. 7/82 despite his knowledge about all these aspects. The conduct of the tenant in fighting several litigations also and having knowledge of all the aspects, taking such a stand would definitely amount to mala fide denial of title so as to attract the ground specified u/s 10 of the Act. Apart from this aspect of the matter, Section 10(8) of the Act also may be looked into which clearly specifies that notwithstanding anything in this section, no person who is receiving or is entitled to receive the rent of a building merely as an agent of the landlord shall, except with the previous written consent of the landlord, be entitled to apply for the eviction of a tenant. In the light of Ex.A-6, this condition also is satisfied and hence, viewed from any angle, the order made by the Appellate Authority does not suffer from any legal infirmity, whatsoever, and the same is liable to be confirmed. As already referred to supra, inasmuch as the legal representatives of the landlord at present are succeeding on the sole ground, which was clearly upheld by the Appellate Authority in the light of the findings recorded, the other grounds need not be adverted to and in view of the same, the C.R.P. filed by the tenant shall stand dismissed and no further orders are required to be made in C.R.P.No. 4257/97 and the same is hereby closed. Accordingly, the legal representatives of the landlord are bound to succeed and the tenant is bound to fail and C.R.P.No. 3695/97 filed by the tenant is hereby dismissed with costs and the tenant to deliver possession of the property in question within a period of one month from today.