
(1999) 10 AP CK 0073
In the Andhra Pradesh High Court
Case No : CRP No. 3644 of 1999

Gollu Bhavani Sankar

APPELLANT

Vs

Bhogavalli Rajeswara Rao and another

RESPONDENT

Date of Decision : 29-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 151

Citation : (1999) 6 ALD 714 : (1999) 6 ALT 374

Hon'ble Judges : C.V.N. Sastri, J

Bench : Single Bench

Advocate : Mr. C. Ramachandra Raju, for the Appellant; Mr. Kondasani Mallikarjuna Rao, for the Respondent

Judgement

1. This Civil Revision Petition is directed against the order dismissing an application filed by the petitioner herein u/s 10 CPC seeking stay of RCC No.11 of 1995 on the file of the Court of the Rent Controller-cum-Principal Junior Civil Judge, Tadepalligudem pending disposal of the suit OS No.45 of 1995 on the file of the Senior Civil Judge, Tadepalligudem.

2. The facts leading to this revision petition may be stated briefly:

The petitioner herein is the 2nd plaintiff in OS No.45 of 1995 which is filed by the petitioner along with his mother for specific preformance of an agreement of sale dated 5-1-1995 alleged to have been executed by one K. Kasi Viswanatham, who figures as the first defendant in the said suit, in their favour agreeing to sell the plaint schedule property to them for a total sale consideration of three lakhs fifteen thousand. The said suit was filed on the allegations that on the date of the agreement, a sum of Rs. 65,000/- was paid by the plaintiffs by way of advance to the vendor and that it was agreed that the sale transaction should be completed by 5-5-1995. Even though the plaintiffs were ready and willing to perform their part of the agreement, the vendor colluded with respondents 1 and 2 herein who figure as defendants 2 and 3 in the said suit, and executed a registered sale deed dated 28-3-1995 in their favour. It is also stated that

respondents 1 and 2 are not bona fide purchasers for value and they had notice of the prior agreement in favour of the plaintiffs and hence they are bound by the same and are bound to execute a sale deed in favour of the plaintiffs along with the first defendant. The suit was accordingly filed claiming the reliefs of specific performance of the agreement of sale dated 5-1-1995 and for recovery of possession of the plaint schedule property or in the alternative for refund of the advance amount of Rs. 65,000/- besides a sum of Rs. 75,000/-by way of damages. Respondents 1 and 2 herein are contesting the said suit inter alia on the grounds that the alleged agreement of sale dated 5-1-1995 is a rank forgery and that the same was fraudulently brought into existence with an ante date so as to defeat the rights of respondents 1 and 2 who are bona fide purchasers for a valuable consideration.

3. After purchase of the property by them, respondents 1 and 2 have filed RCC No.11 of 1995 on the file of the Rent Controller-cum-Principal Junior Civil Judge, Tadepalligudem against the petitioner herein and three others for eviction from the petition schedule building on the ground that they were originally inducted as tenants by the vendor and that after sale of the property they were attorned to respondents 1 and 2 and they committed wilful default in payment of the rents and also on the ground that the building is bona fide required for personal occupation. The petitioner herein figures as the fourth respondent in the RCC whereas respondents 2 and 3 therein are his father and brother respectively and the first respondent is the firm of which they are the partners. The petitioner herein and the other respondents in RCC No.11 of 1995 are contesting the said eviction petition contending inter alia that respondents 1 and 2 have no title to the schedule building in view of the prior agreement of sale dated 5-1-1995 in favour of the petitioner and his mother which is valid and binding on respondents 1 and 2, that they have not committed any wilful default in payment of the rents and the alleged personal occupation set-up by respondents 1 and 2 is neither true nor bona fide.

4. Contending that the issues involved in both the proceedings are substantially one and the same and common questions arise for determination, the petitioner herein filed 1A No. 1128 of 1999 in RCC No. 11 of 1995 u/s 10 IPC seeking the stay of all further proceedings in the RCC pending the disposal of OS No.45 of 1995. The lower Court dismissed the said application observing that Section 10 CPC has no application since the subsequent proceeding is not a suit and that the parties to both the proceedings are not the same. It also observed that the petitioner has not filed either the plaint and the written statement or issues framed in OS No.45 of 1995 to see whether the questions arising in both the matters are substantially the same or not.

5. Sri C. Ramachandra Raju, learned Counsel for the petitioner sought to assail the order of the lower Court by contending that even though both the proceedings are not suits and Section 10 CPC may not in terms apply, still there is no legal bar for invoking and applying the underlying principle in as much as

the questions substantially in issue in both the proceedings are the same. He also contended that to avoid multiplicity of proceedings and conflicting judgments, it is just and necessary to order the stay of RCC No. 11 of 1995 as sought for. He further contended that it is not necessary that all the parties should be common in both the proceedings.

6. On the other hand, Sri K. Mallikharjuna Rao, learned Counsel appearing for the respondents has submitted that there is no connection whatsoever between the Rent Control proceeding and the suit and the scope of enquiry in both the proceedings is altogether different and that there is no question of any prejudice to the petitioner if RCC is not stayed as in the event of his ultimate success in the suit, the petitioner can recover possession of the property. The Counsel for the respondent also submitted that the application u/s 10 CPC is not maintainable and the Rent Controller has no jurisdiction to invoke or apply section 10 CPC to stay the proceedings on his file. In support of his contentions, the learned Counsel for the respondent has placed reliance on two judgments of this Court reported in *Amrutlal v. The Principal Rent Controller, Hyderabad* and another, 1978 (2) ALT 102, which is a judgment of Division Bench and in *Menta Subbaramayya and another v. Batchu Narasimha Swamy and another*, 1972 An.WR 105, of a learned single Judge. In the former decision it is held that Section 10 CPC cannot be availed of by the Rent Controller to stay the proceedings and the Rent Controller cannot even stay the suit invoking Section 151 CPC. The Rent Controller is not a civil Court though he performs the functions similar to civil Court and belongs to a judicial cadre and it is not open to him to follow the procedure laid-down by the CPC bypassing the Rent Control Act or Rules made thereunder except to the extent indicated in the proviso to Rule 22.

7. In the 2nd judgment it is held that Section 10 CPC is attracted only when both the proceedings are suits. If one is a suit and the other is not a suit, Section 10 CPC is not attracted. It is also held that for the application of Section 10 CPC, both the Courts in which the suits are pending must be of concurrent jurisdiction.

8. The learned Counsel for the petitioner, however, sought to rely on the decision of the Supreme Court reported in *P.V. Shetty Vs. B.S. Giridhar*, , for the proposition that even if Section 10 CPC does not in terms apply there is no legal impediment for invoking the underlying principle where the questions substantially in issue in both the proceedings are one and the same by invoking the inherent powers u/s 151 CPC. The Division Bench judgment reported in *P.V. Shetty Vs. B.S. Giridhar*, which is directly in point dealing with the power of the Rent Controller to stay the proceedings before him is binding on me. Even assuming that the power u/s 151 CPC can be invoked, I am of the view that on the facts of the present case, there are no valid grounds to stay the Rent Control proceedings till the disposal of the civil suit as sought for by the petitioner. In the first place, the scope of the enquiry and the questions for determination in both the proceedings are substantially different. The main questions to be decided in

the civil suit are whether the agreement of sale dated 5-1-1995 is true and valid and whether respondents 1 and 2 herein are bona fide purchasers for value without notice of the said agreement. In the Rent Control Proceedings, the main questions to be decided are whether the respondents have committed wilful default in payment of rent, and whether the suit premises is bona fide required by the landlord for personal occupation, it is well settled that the enquiry in a Rent Control proceedings is summary in nature and the Rent Controller has no jurisdiction to go into the questions of title. It is true that the petitioner herein and the other respondents in the RCC are denying the title of respondents 1 and 2 for the schedule premises by setting up the prior agreement of sale dated 5-1-1995. Under the provisions of the Rent Control Act, the Rent Controller can only decide whether the denial of title of the landlord by the tenants is bona fide or not. If he comes to the conclusion that such denial is bona fide, the Rent Controller has to dismiss the eviction petition directing the landlord to establish his title in a competent Court of law. On the other hand, if the Rent Controller comes to the conclusion that the denial of title is not bona fide, on that ground itself, he can order eviction of the tenants without going into the other questions. So the scope of enquiry in the two proceedings is altogether different. In fact in the decision reported in *Menta Suhbaramayya and another v. Batchu Narasimha Swamy and another* (supra) it is held:

"When a particular procedure is laid down in the Rent Control Act itself, in case of denial of title provisions of CPC i.e., Section 10 or 151 are not applicable. The provisions of Section 10 (6) of the Rent Control Act are mandatory. The Rent Controller has no option to proceed in any other manner stated in Section 10 (6) in case of denial of landlord's title by the tenants. If the Rent Controller is of the opinion that the denial of landlord's title is bona fide, then he shall dismiss the eviction petition filed by the landlord. If on the other hand he is not satisfied about the bona fides of the denial of title raised by the tenants, then he shall order the tenants to put the landlord in possession of the building."

9. Further, as rightly pointed out by the learned Counsel for the respondent, even if eviction is ordered by the Rent Controller and subsequently the suit is decreed, the plaintiffs in the suit can recover possession pursuant to the decree granted to them. As such, there cannot be any prejudice to the petitioner by not staying the RCC.

10. For all the foregoing reasons. I do not find any merit in the CRP. It is accordingly dismissed but without costs. Interim stay granted on 16-9-1999 stands vacated. No costs.