
(2019) 07 TEL CK 0002

In the Telangana High Court

Case No : Civil Revision Petition No. 1411 Of 2019

Hassan Nizamuddin Died

APPELLANT

Vs

Khanqaheameena Mahboob Society

RESPONDENT

Date of Decision : 24-07-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order I Rule 10

Citation : (2019) 07 TEL CK 0002

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : Vedula Srinivas , Azhar Ali Khan

Final Decision : Disposed Of

Judgement

1. This Revision is filed challenging the order dt.26.04.2019 in I.A.No.301 of 2018 in RCA.No.46 of 2017 of the Additional Chief Judge, City Small Causes Court, Hyderabad.
2. Originally, 1st petitioner(died) had filed RC.No.76 of 2016 before the III Additional Rent Controller, City Small Causes Court, Hyderabad, against the 2nd respondent herein seeking eviction of the 2nd respondent on the ground that he had committed willful default in payment of rents from June, 2015 to April, 2016.
3. The 2nd respondent remained ex-parte initially, and the RC was allowed on 19.07.2016, and a decree was passed evicting the 2nd respondent from the RC schedule property.
4. Challenging the same, 2nd respondent filed RCA.No.46 of 2017 before the Additional Chief Judge, City Small Causes Court, Hyderabad.
5. In the said appeal, 1st respondent herein sought to get impleaded claiming title to the RC schedule property.
6. It was the contention of the 1st petitioner in the RC that he is the absolute owner of the RC schedule property; that the 2nd respondent's father had

executed a Rental Deed in favour of the 1st petitioner's wife, Wahedunnissa Begum; and that the 2nd respondent, who succeeded to that tenancy, has committed willful default in payment of rents.

7. It is the contention of the 1st respondent in I.A.No.301 of 2018 that one Amena Begum was the absolute owner and possessor of the RC schedule property along with other properties; that she also died long back and her husband also died in February, 1974; that they had three sons and a daughter, i.e., Miya Aziz @ Aziz Mirza Mahaboobi(1st son), Akbar Mirahboobi(2nd son), Afzal Mirza Chishty(3rd son) and Wahedunnisa Begum, who succeeded to the properties as per Mohammedan Law.

8. According to the 1st respondent, there was an oral partition by metes and bounds in 2001 by setting apart 398 sq. yards, which is considered to be a holy space; that the remaining area of 1046.33 sq.yards was divided as per Muslim Shari Law, in which 1st son got 296.33 sq.yards, 2nd and 3rd sons got 300 sq.yards each, and the daughter-Wahedunnisa Begum, got 150 sq.yards only; that Wahedunnisa Begum and her husband were permitted by her father to stay in the area of 398 sq.yards of holy space as care taker; that the tenancy of the father of the 2nd respondent is with Afzal Mirza Chishty, who is the 3rd son of Amena Begum; that Wahedunnisa Begum and her husband had no title to the RC schedule property; and therefore the 1st respondent, which is represented by Afzal Mirza Chishty, son of original owner-Amena Begum, being necessary and property party, ought to be impleaded in the RC.

9. Counter affidavit was filed by the 2nd petitioner, who had been impleaded as the legal heir of the deceased-1st petitioner in the RCA disputing the claim of the 1st respondent, and contending that the 1st respondent had no locus standi to file the implead petition, and there is no jural relationship of landlord and tenant between the 1st respondent and the 2nd respondent.

10. The 2nd respondent filed a counter stating that he has no objection for impleadment of 1st respondent in the RCA.

11. By order dt.26.04.2019, the Court below allowed the said application for impleadment on the ground that the 2nd respondent admitted that there is no jural relationship of landlord and tenant between himself and 1st respondent, and also in view of certain documents filed by the 1st respondent showing that the father of the 2nd respondent was a tenant of Afzal Mirza Chishti and the 1st respondent-Society. It also referred to the following decisions:

"1. J.H.Krishna Murthy vs. Mir Zamin Ali (LAWS(APH) 1983 2 15)

2. G.Manikyamma(died) By LRs vs. T.Seetharamaiah (1988(2) ALT 333

3. Richand Lee vs. Girish Soni (AIR 2017 Supreme Court 921)

4. Khaja Abdul Khader vs. Mahabub Saheb (AIR 1979 AP 152)

5. Satish Chand Gupta vs. Sarvesh Chand Gupta (AIR 1984 Delhi 409)

6. Rajabibi vs. Ameerli (AIR 1974 Karnataka 115)

7. .Bal Kitan Nursery School Vs. Kesari Prasad (AIR 1987 Supreme Court 1970)"

It held that provisions of Order I Rule 10 CPC apply to the RC proceedings and in order to have complete and effective adjudication, settlement of issues and controversies involved in the matter, I.A.No.301 of 2018 is allowed.

12. Assailing the same, this Revision is filed.

13. Counsel for the petitioners contended that the Additional Chief Judge, City Small Causes Court, Hyderabad erred in impleading the 1st respondent, who has setup rival title to the RC schedule property as against the petitioners, in RCA.No.46 of 2017.

14. He also placing reliance on the judgments of the Supreme Court in Life Insurance Corporation of India v. India automobiles and Co. and others 1990(4) SCC 286 , Dr.Ranbir Singh v. Asharfi Lal 1995(6) SCC 580 , Keshar Bai v. Chhunulal 2014(11) SCC 438 and Tribhuvanshankar v. Amrutlal 2014(2) SCC 788 and contended that in eviction proceedings, question of title to the properties cannot be gone into and the Court only needs to decide whether the relationship of landlord and tenant exists between the petitioners and the 2nd respondent in the eviction petition; but by impleading the 1st respondent, Court below has converted proceedings for eviction of the 2nd respondent into a matter where inter-se title dispute between the 1st respondent and the petitioners, is to be gone into.

15. Sri Y.Chandra Shekar, Counsel appearing for Sri Azhar Ali Khan, counsel appearing for 1st respondent and Sri Akshat Sanghi, counsel appearing for 2nd respondent supported the order passed by the Court. They placed reliance on a decision of a Division Bench of this Court in G. Manikyamma v. T. Seetharamaiah 1988(2) ALT 333 .

16. I have noted the contentions of both sides.

17. Admittedly, the proceeding between the parties is a proceeding under A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, wherein the 1st petitioner had sought eviction of the 2nd respondent alleging existence of jural relationship of landlord and tenant between himself and the 2nd respondent and had alleged that the 2nd respondent had committed willful default in payment of rents.

18. As stated above, originally, an ex-parte decree of eviction passed in favour of the 1st petitioner on 19.07.2016 by the III Additional Rent Controller at Hyderabad was challenged in RCA.No.46 of 2017, and while the said RCA was pending, the 1st respondent had filed implead application I.A.No.301 of 2018 seeking impleadment in the RCA.

19. It is not in dispute that on 26.04.2019, while allowing I.A.No.301 of 2018, the Court below also allowed RCA.No.46 of 2017 and remanded the matter back to the Rent Controller by setting aside the order dt.19.07.2016 passed in

RC.No.76 of 2016 and restoring the said RC to the file of the said Rent Controller.

20. Since the proceeding is now pending before the Rent Controller, the questions that arise are, (i) "whether the Rent Controller has jurisdiction to decide the questions of title?" and (ii)"whether by impleadment of the 1st respondent in the RC, questions of title to the RC schedule property will now have to be gone into or not?"

21. In Life Insurance Corporation of India's case(1 supra), the Supreme Court held that in a proceeding under the Act, whether it be for fixation of fair rent or to evict the tenant, parties can raise several objections including an objection that the opposite party is not the landlord; and that the Rent Controller has to satisfy himself that the person seeking eviction or for fixation of fair rent, is a landlord, and the Rent Controller's jurisdiction on this issue is limited. It held that if there is denial of relationship of landlord and tenant, the Rent Controller can only go into the question whether such denial is bonafide, but he cannot decide the questions of title finally. It held that the Rent Controller may reach a conclusion, on the merits, that the landlord has title, yet he cannot order eviction if the tenant's action in denying the title, was bonafide. Per contra, the Rent Controller may reach the conclusion basing on the material before him that the landlord has no title; yet, it seems, if he finds that the applicant is otherwise a landlord and that the grounds on which the tenant's denial was based were not bonafide, he will have to order eviction. It held that the Rent Controller has to satisfy himself as to the extent of premises qua which the relationship of landlord and tenant exists and in respect of which rent is receivable or payable. It observed that the question of title may be a complex one, involving difficult issues and for instance, where the owner may claim title under an adoption or a Will or a trust deed or a gift deed and there may be contentious claims among several persons, which it will not be possible for the Rent Controller to decide.

22. This principle has been reiterated in Dr.Ranbir Singh's case(2 supra) wherein the Supreme Court held that question of title of the property is not germane for deciding an eviction suit. It held that in a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into, because the suit of the plaintiff would be dismissed even if he succeeds in proving his title, but fails to establish the privity of contract of tenancy. It held that in a suit for eviction based on such relationship, the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties.

23. In Keshar Bai's case(3 supra) also the Supreme Court held that in eviction proceedings, question of title to the property may only be incidentally gone into and cannot be decided finally.

24. In Tribhuvanshankar's case (4 supra), also the Supreme Court observed that there is a difference between a suit for eviction based on landlord and tenant relationship and a suit for possession based on title, and once the relationship of landlord and tenant is not proven, there cannot be a decree for eviction. It followed the judgment in Life Insurance Corporation of India's case(1 supra).

25. No doubt, in G.Manikyamma's case(5 supra) cited by the respondents, a Division Bench of this Court took the view that Order I Rule 10 CPC can be invoked by a Rent Controller Court to proceed against the persons who set up rival title to the property also.

26. But another Division Bench in Soni v K.Nageswara Rao 1991(3) ALD 200 declined to follow the said judgment by placing reliance on the judgment in Life Insurance Corporation of India's case(1 supra). The Division Bench in Soni's case has held that:

"13. All the above observations of the Supreme Court which relate to the denial or claim by a tenant, in our view, apply with greater force in respect of an application by a third party. In view of the above observations of the Supreme Court, we respectfully dissent from the observations in G. Manikyamma v. T. Seetharamaiah (1-supra).

14. It has then been argued that, if a third party who raises a question of title is not allowed to intervene, the possibility of persons without title filing collusive suits for eviction against tenants might arise. In our view, such a situation is rare and even if there is one, there are adequate remedies in the civil law to seek declarations that proceedings in another court or tribunal are collusive. In fact, the greater advantage in not allowing third parties to intervene and raise questions of title, is that unscrupulous tenants cannot any longer get collusive applications filed by the third parties claiming title so as to protract the rent control proceedings. The advantage of denying to third parties the right to raise questions of title, in our view, far outweighs the doubtful advantage of permitting such persons to get impleaded.

15. We would, however, like to state that it is not as if Order 1, Rule 10 C.P.C. would never be attracted to proceedings before the Rent Controller. A legatee or a purchaser or other person or a sub-tenant or any other person can always get impleaded so long as he is not raising any dispute of title or so long as his title is not disputed. Similarly, if the landlord and the tenant agree for the third party being impleaded and if no question of title needs to be decide, the application under Order 1, Rule 10 C.P.C. can be allowed. It is only where a disputed question of title is raised or has to be decided at the instance of the third party that it can be said that the scheme of the Act does not permit such impleading."

27. It appears that the Court below did not notice the above decisions or the effect of impleadment of 1st respondent in the proceedings pending before the Rent Controller, and omitted to note that the Rent Controller has only jurisdiction to see about the existence of relationship of landlord and tenant between the

petitioner and the 2nd respondent.

28. In my considered opinion, impleadment of the 1st respondent in the RCA and consequently in the RC by order dt.26.04.2019 in I.A.No.301 of 2018 in RCA.No.46 of 2017 is not permissible because it would result in conversion of the proceedings for eviction initiated by the 1st petitioner against the 2nd respondent into a proceeding where title to the RC schedule property as between the 1st respondent and the petitioners would require to be adjudicated, and the Rent Controller has no jurisdiction to do so.

28. Accordingly, this Civil Revision Petition is allowed; the order dt.26.04.2019 in I.A.No.301 of 2018 in RCA.No.46 of 2017 of the Additional Chief Judge, City Small Causes Court, Hyderabad, is set aside and the said I.A. is dismissed. Consequently, in RC.No.76 of 2016(which is remanded back to the III Additional Rent Controller, City Small Causes Court, Hyderabad) also the 1st respondent's impleadment is set aside. However, liberty is given to the 1st respondent to agitate all its rights by availing suitable remedies in an appropriate forum in regard to its claim of title to the RC schedule property. No order as to costs.

29. Consequently, miscellaneous petitions pending if any, shall stand closed.