
(2001) 02 AP CK 0059
In the Andhra Pradesh High Court
Case No : CRP No. 1574 of 2000

Jalal and Sons and another	Vs	APPELLANT
Sita Bai (died) by LRs. and others		RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 12, 20, 22, 24
Civil Procedure Code, 1908 (CPC) — Order 8 Rule 3, Order 8 Rule 5
Evidence Act, 1872 — Section 115, 116, 58, 67, 68
Succession Act, 1925 — Section 63

Citation : (2001) 2 ALD 547 : (2001) 2 ALT 683

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. T. Veerabhadrayya, for the Appellant; Mr. S. Venkata Reddy and Mr. v. Ravinder Rao, for the Respondent

Judgement

1. In this tenant's revision u/s 22 of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereafter called "the Act"), the first petitioner is the proprietary concerned and the second petitioner is proprietor of the first petitioner (hereafter compendiously called as "tenant"). The tenant is aggrieved by the order of the Court of Additional Chief Judge, City Small Causes Court, Hyderabad, dated 24-3-2000 in RA No.47 of 1995, confirming the eviction order passed by the Court of III Additional Rent Controller, Hyderabad, in RC No.t084 of 1986 dated 31-12-1994. The order of the appellate authority is impugned on the ground that the same is vitiated by irregularity and illegality. The parties are referred to as they are arrayed in Rent Control Case.

2. The tenant is running business in the name and style of M/s. Jalal & Sons. The tenant was inducted in 1938. The tenant runs a watch repair and sales shop in suit mulgi bearing premises No.5-8-543. The shop admeasures 15" x 60" and is situated in busy commercial area of Hyderabad, known as Abid Road. Originally, lease was obtained by late Syed Jalaluddin, the father of the present proprietor

from late Sri G. Ramachar Joshi, who is the husband of Sita Bai, who succeeded to the property after the death of Ramachar Joshi. Be that as it may, Sita Bai and her adopted son, Madhavacharya Joshi (hereafter called "the landlords") filed RC No.1084 of 1986 on 31-1-1985 seeking eviction of the tenant on two grounds; that the tenant committed wilful default in payment of rent and that the tenant is guilty of acts of waste and damage. In March, 1987 the landlords filed an application being IA No.188 of 1987 for amending the rent control petition. By the amendment they raised two additional grounds; that the tenant committed wilful default in payment of rent from January, 1985 till February, 1987 and that the premises in question is required for carrying on business in readymade garments and hosiery by Anand Joshi, who is the grandson of Sita Bai and son of Madhavacharya Joshi. The tenant opposed this application inter alia denying the necessity for such amendment and also denying the allegation that the premises is required for personal occupation of landlords for the business of Anand Joshi. The amendment was allowed by the learned Rent Controller and paragraphs 6(a) and 7(a) were added in the original petition. On 23-8-1988 Sita Bai died. Therefore, Madhavacharya Joshi, who is the second petitioner in the Rent Control Case filed IA No.704 of 1988 u/s 24 of the Act read with Rule 19 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 (hereafter called "the Rules") praying for leave to amend and add Anand Joshi and Pranesh Joshi, the two sons of Madhavacharya Joshi, as petitioners 3 and 4 in the main eviction case. The basis for such prayer is a Will alleged to have been executed by Sita Bai on 2-10-1987 bequeathing the premises to Anand Joshi and Pranesh Joshi. The learned Rent Controller allowed the application IA No.704 of 1988 as on counter was filed, and, therefore, both the sons of Madhavacharya Joshi were added as petitioners 3 and 4 in the Rent Control Case. The tenant filed additional counter on 12-12-1988 stating that petitioners 3 and 4 are not legal representatives of Sita Bai and that they are wrongly impleaded in the petition.

3. The landlords filed another interlocutory application being IA No.153 of 1991 seeking amendment of the petition by adding one more ground to the effect that the suit premises is bona fide required for demolition and reconstruction u/s 12 of the Act. This application was rejected. Therefore, the landlords filed an appeal u/s 20 of the Act before the appellate authority who by order dated 23-12-1991 allowed the amendment. After unsuccessful attempt in CRP No.621 of 1992, which was dismissed by this Court on 26-2-1993, the tenant filed a special leave petition, being SLP (Civil) No.5975 of 1992 against order in CRP No.621 of 1992 and the SLP was dismissed on 3-8-1993. The amendment was therefore carried by adding paragraph 7(b) in the rent control petition. The tenant filed additional counter on 13-9-1993 inter alia contending that the suit premises is in good condition and the requirement by the landlords for demolition and reconstruction is not bona fide. The additional counter filed on 13-9-1993 traverses the allegations made in paragraph 7(b) only of the rent control petition.

4. On behalf of landlords Madhavacharya Joshi (petitioner No.2) and Anand Joshi (petitioner No.3) were examined as PWs. 1 and 2 and Exs.PI to P15 were marked

for the landlords. The tenant examined himself as RW1 duly marking Exs.RI to R.267, which include large number of Bank Pay Orders, Money Order receipts, returned Money Order coupons etc. The learned Rent Controller by elaborate order dated 31-12-1994 allowed RC No. 1084 of 1986 on the ground that the denial of title of petitioners 3 and 4 by the tenant is mala fide, that the premises is bona fide required by landlords for occupation of Anand Joshi for his business and that the tenant is guilty of causing damage to the premises. Against the eviction order the tenant carried the matter in appeal being RA No.47 of 1995 before the learned Additional Chief Judge, City Small Causes Court. The appellate authority upheld the eviction only on two grounds; that denial of title of the landlord is not bona fide and that the suit premises is required by the landlord for personal occupation of carrying on business. Aggrieved by the same, the tenant is before this Court seeking revision of the order of the appellate authority.

5. Sri T. Veerabhadraiah, learned Counsel for the tenant, and Sri S. Venkala Reddy, learned senior Counsel for the landlords, made elaborate submissions. With the assistance of the learned Counsel for the parties, this Court has gone through the entire pleadings and the evidence - both oral and documentary. Nonetheless, having regard to the provisions of Section 22 of the Act, which enables the High Court to call for and examine the records relating to any order by the Rent Controller in execution or by the appellate authority u/s 20 of the Act, to satisfy itself as to the legality, regularity or propriety of the order under revision, the power is limited and not expansive.

6. In a recent judgment in *Mudigonda Chandra Mouli Sastry v. Bhimanepalli Bikshalu* 1999 (5) ALD 101 (SC), the Supreme Court laid down that it is not open to the High Court to reassess and re-appreciate evidence and to interfere with the concurrent findings of facts recorded by the Rent Controller and the appellate authority. In the said case, the landlord's petition for eviction inter alia on the ground of bona fide requirement and wilful default in payment of rent was allowed by the Rent Controller. The same was affirmed by the appellate authority. This Court exercising revisional power u/s 22 of the Act held that by virtue of Section 10(4)(i) of the Act no order of eviction can be passed. In landlord's appeal before the Supreme Court it was contended that it was not open to the High Court while exercising its revisional jurisdiction to reassess the evidence and arrive at a different finding contrary to the concurrent finding of facts recorded by the two Courts below. The submission was accepted and the Supreme Court laid down as under.

"Coming to the second submission what we find is that, that the Rent Controller and the First Appellate Authority after assessing the evidence recorded concurrent finding of facts that the need of the landlord was bona fide. It was not pointed out that the said finding suffered from any legal infirmity. Under such circumstances, it was also not open to the High Court in exercise of its revisional jurisdiction to have indulged in reassessment of evidence and thereby interfered with the concurrent finding of facts recorded by the two Courts below."

7. Learned Counsel for the petitioner/ tenant submits that the appellate authority committed grave error in observing that the tenant did not take any additional plea denying the title of petitioners 3 and 4 that when IA No.704 of 1988 was filed by Madhavacharya Joshi to implead petitioners 3 and 4 as legal representatives of Sita Bai, the Will Ex.P6 dated 2-10-1987 allegedly executed by Sita Bai was not filed before the Court, that the tenant in the additional counter filed on 12-12-1988 categorically stated that petitioners 3 and 4 are not legal representatives of Sita Bai and that in the absence of proof of Will, the tenant's denial of title of petitioners 3 and 4 is bona fide. He further submits that u/s 68 of the Evidence Act any Will cannot be used as evidence until one attesting witness has been called for the purpose of proving its execution and in view of this the tenant is justified in taking stand that petitioners 3 and 4 are not legal representatives of Sita Bai. He invited the attention of this Court to the additional counter dated 12-12-1988, the evidence of PWs. 1 and 2 and further submits that after the death of Sita Bai on 23-8-1988 the landlords did not give any notice informing about the execution of the Will and there was no attornment of tenancy. The tenant never paid any rent to petitioners 3 and 4. The learned Counsel further submits that u/s 10(2)(vi) of the Act mala fide denial of title of the original landlord is a ground for eviction of the tenant, but not denial of the title of a derivative title holder either under the Will or any transfer deed. The Will was not proved in accordance with law and therefore the tenant's denial of title is bona fide. In support of this submission he placed reliance on the judgments of the Supreme Court in AIR 1937 251 (Privy Council) and Rameshwar Lal Sharma Vs. Sardar Amrik Singh, .

8. The second submission of Sri Veerabhadraiah is that the landlords do not bona fide require the building for occupation as the landlords were entitled to the possession of another building/premises, but did not occupy the same. He also further submits that as per Ex.R257 half of the portion of the suit premises has already been leased out to M/s. Shinde Enterprises and the premises left after the demise under Ex.R257 measuring 7 1/2" x 60" is not sufficient to the landlords to carry on their business in readymade garments.

9. Sri S. Venkat Reddy, learned senior Counsel for the landlords submits that when IA No.704 of 1988 was filed to bring petitioners 3 and 4 as legal representatives of deceased Sita Bai, the tenant did not deny the execution or existence of Will Ex.P6 and therefore in the absence of specific denial, IA No.704 of 1988 was allowed. Thereafter, the tenant did not take specific plea either with reference to paragraph 7(a) in the petition (dealing with bona fide requirement of the suit premises for the business of Anand Joshi) nor filed additional counter denying the title of petitioners 3 and 4. Therefore, he submits that the admitted facts need not be proved and this principle applies to "Will" also. He placed reliance on Sections 58 and 68 of the Evidence Act as well as Order 8, Rules 3 and 5 of Code of Civil Procedure, 1908 ("CPC" for brevity), in the absence of any specific pleading denying the execution by Sita Bai bequeathing suit premises in favour of petitioners 3 and 4 in the pleadings by the tenant and also having

regard to the admission made by RW1 in the evidence that he is aware of the execution of the Will, both the Rent Controller and the appellate authority were justified in recording a finding that the tenant's denial of title is not bona fide. He further submits that during the pendency of the rent control proceedings if the landlord dies bequeathing property under a Will to the other person or relative, the tenant is not entitled to impeach the Will on any of the grounds available for challenging the validity of the Will. He placed reliance on the judgment of the Division Bench of this Court in K. Suryanarayana v. A. Sanyasamma 1983 (1) APLJ 188 and a Division Bench judgment of Kerala High Court in Thayyullathil Kunhikannan and Others Vs. Thayyullathil Kalliani and Others, . In support of his contention that the denial of title by the tenant is not bona fide, he placed reliance on Arjan Dass v. Madal Lal 1971 RCJ (Delhi) 2, Barkatram v. S. Harpal Singh Gil! Family Trust 1989(1) RCR 227, Hyderabad Palmers Pvt., Ltd. v. Smt. B. Rajani 1994 (2) RCR 124 and the judgments of the Supreme Court in Chittaranjan Choudhury Vs. State of Bihar, and Smt. G. Kaushalya Devi Vs. Ghanshyamdas, .

10. In the background of the rival contentions the points that arises for consideration in the civil revision petition are:

(1) Whether the denial of title of petitioners 3 and 4 (respondents 3 and 4 herein) is bona fide ?

(2) Whether the landlords bona fide require the suit premises for the purpose of business which he is carrying on?

In Re Point No. 1:

The petition was filed by Sita Bai and Madhavachaiya Joshi. In the counter filed in the petition the tenant did not deny the title of either Sita Bai or Madhavacharya Joshi. Indeed, as rightly contended by both the Counsel Madhavacharya Joshi, who is looking after the affairs of the property and who is also one of the joint holders of bank account for deposit of rent being SB.17357 in Syndicate Bank, Basheerbagh, for the purpose of the Act is a landlord. During the pendency of the matter before the Rent Controller the landlords amended the rent control petition twice. In the first amendment insofar as the relevant for the purpose of this case paragraph 7(a) was added where petitioners 1 and 2 alleged that they require the suit premises for carrying on the business in readymade garments and hosiery by Anand Joshi, grand-son of the Sita Bai and son of Madhavachaiya Joshi. The application seeking amendment was not opposed by the tenant nor did he file a separate additional counter specifically denying the title of petitioners 3 and 4 which they claimed under Ex.P6 Will. Curiously when the landlords' application being IA No. 153 of 1991 seeking to raise additional ground with reference to Section 12 of the Act (demolition and reconstruction) was allowed, he filed elaborate additional counter whereas after petitioners 3 and 4 were impleaded as legal representatives of Sita Bai by virtue of orders dated 26-10-1988 in "IA No.704 of 1988, the tenant filed a brief additional counter on

12-12-1988 stating as under.

"The petitioner Nos.3 and 4 are not the LR's of the petitioner No.1 and they are wrongly impleaded in this petition".

11. Apart from this RW1, tenant admitted the execution of "Will", but stated that the Will was fabricated and created for the purpose of the case. The question therefore is whether the tenant can defeat the case of the landlord for eviction by insisting on proof of the Will and, in the facts and circumstances of the case, whether the landlords are justified in contenting that the execution of Will by Sila Bai stands proved.

12. In *Arjan Doss* (supra) the Delhi High Court held that tenant has no locus standi to challenge the validity of the Will made by the landlord as the tenant cannot claim to be the heir of the landlord. Similar view was expressed by Punjab and Haryana High Court in *Barkat Ram's* case (supra). In the said case, the original landlady Chaitar Kaur filed eviction applications u/s 13 of East Punjab Urban Rent Restriction Act, During the pendency she died. She had made a Will creating a trust known as Sardar Harpal Singh Gill Family Trust. On the basis of the Will, the trust moved the Rent Controller to be impleaded as party in the place of the original landlady. The application was contested by the tenants on the ground that there was no trust validly constituted under the Will. The learned Rent Controller rejected the plea. In tenant's revision, the Punjab and Haryana High Court accepted the view of the learned Rent Controller that it is not for the tenant to contest the validity of the Will in the proceedings under the Rent Control Act.

13. In law, the Will is a legal document, which is to be proved like all other documents. u/s 67 of the Evidence Act if a document is alleged to be signed by a person the signature of the said person must be proved to be in his handwriting and for proving such handwriting the opinion of the persons acquainted with the handwriting concerned are relevant. If a document is offered as evidence the opinion of the person acquainted with the handwriting is sufficient for the purpose of Section 67 of the Evidence Act. Section 68 of the Evidence Act requires the proof of the "Will" by at least one attesting witness. As Will is also a legal document, in considering the validity of the Will. Section 58 of the Evidence Act is also relevant and the Court will be concerned with the enquiry similar to the case of proof of other documents.

14. Who can impeach the validity of the Will and in what circumstances the Court should insist on the strict compliance of the proof of the Will. When a Will is relied on in support of the right to property, in the absence of any other Will, nothing prevents the Court to conclusively presume that the Will is last testament of the deceased testator. It is a different thing whether the Will is required to be proved or not. When the validity of the Will is in question and challenged the propounder of the Will is required to prove the Will in accordance with Section 68 of the Evidence Act and Section 63 of the Indian Succession Act.

Ordinarily, the persons with limited penumbral right to property are treated as strangers and cannot be allowed to question the validity of the Will. For example, a tenant, a statutory tenant, a licensee or a person with limited right of occupation cannot question the Will propounded by the beneficiary. The only exception would be when a near relative of the deceased testator who is given a limited right of vested remainder in the property who can be permitted to question the validity of the Will when such person sets up absolute right in himself. The premise that law permits every stranger or a person with limited interest or limited right to possession under lease to question the Will is not a sound principle of law and is fraught with illogicality and illegality. Under the Rent Act a tenant has statutory protection of not being evicted unreasonably or without valid cause. The limited right given to tenant under the Act cannot be treated as conferring a right to question the validity of the Will propounded by beneficiary in whose favour the premises is bequeathed by the deceased original landlord.

15. u/s 116 of the Evidence Act the tenant or licensee is not permitted to deny that the landlord at the beginning of the tenancy has no title of the immovable property. It is well settled that the tenant, however, can deny the title of derivative title holder, who enters the shoes of the original landlord. [See AIR 1927 151 (Privy Council) , AIR 1933 29 (Privy Council) , Kumar Raj Krishna Prosad Lal Singh Deo Vs. Barabani Coal Concern Ltd. and Others, and Krishna Prosad case (supra)].

16. A reading of these authorities would show that if the original landlord has donated the property by way of gift to his near relative or bequeathed the property under a Will to a near relative the tenant has no concern as to who would succeed to the original landlord and the estoppel u/s 116 of the Evidence Act is attracted.

In such an event, any denial of the title of the donee under the gift deed or legatee under the Will cannot be considered in law as bona fide denial of title.

17. In Vertannes case (supra) the facts are as follows : Sarkies Vertannes executed a Will in 1896 in favour of his wife bequeathing three houses together with land and other movables. After death of Vertannes, his wife obtained probate of the Will, sold the property and paid the debts including the mortgage on the kokine land. As the kokine land had valuable brick earth the wife of Vertannes embarked on brick making business and she was assisted by her elder son who died in 1917 intestate. On 1-2-1909 the Burma Building and Loan Association in whose favour the widow executed a mortgage for Rs.30,000/- assigned its mortgage to the firm of Robinson and Mundi in which Robinson was a partner. In 1916 the firm was dissolved and the debt due from the widow was agreed to be assigned to Robinson. In 1917 as the mortgage debt was huge, Robinson agreed not to sell the property for a year for enforcement of the mortgage and also agreed to convey the property to the mortgagor or to any person named by the widow. Later the plaintiff leased out the kokine land to the first defendant on month-to-month basis. In May, 1920 Robinson issued a quite

notice to the first defendant contending that the property has been mortgaged to him and later conveyed to him. The first defendant, son of Sarkies Vertannes contended that his mother had no power to mortgage and sell the property and he had attorned tenant under mistake. The Law Lords in the Privy Council answered the plea of estoppel placing reliance on Sections 115 and 116 of the Evidence Act and held that the tenant cannot challenge the title of the landlord and decreed the suit.

18. The case of Kumar Raja (supra) deals with a gift deed, which was denied by the tenant. The Raja of Panchati settled the underground rights of a coalfield Mouza Manohar Bahat in favour of Raja Bakibh on 25-1-1912 on condition of payment of royalty. Raja Ballabh in his turn sold his interest to Barboni Coal Company by registered deed. In 1926 Raja of Panchati made a gift to the plaintiff in respect of the underground rights in the coalfield. In pursuance of gift, the defendant company paid royalty to the plaintiff, who demanded arrears of royalty from Barboni Coal Company. The same was refused. He filed a suit for recovery of royalty arrears and also for declaration that the royalty is first charge on the colliery. The title of the plaintiff's company itself was denied. The trial Court dismissed the suit. The High Court placed reliance on Section 116 of the Evidence Act and dismissed the appeal as "the tenant is precluded from disputing the title of the plaintiff".

19. The judgment of the Division Bench of Calcutta High Court in Kumar Raja's case (supra) was affirmed by the Privy Council in Krishna Prosad case (supra). The Privy Council observed that the principle adumbrated in Section 116 of the Evidence Act does not apply to disentitle a tenant to dispute the derivative title of one who claims to have since become entitled to the reversion, though in such cases there may be attornment, acceptance of rents etc., operate as other grounds of estoppel.

20. In this case, petitioners 3 and 4 were impleaded as legal representatives of deceased Sita Bai under Will Ex.P6. The tenant did not specifically deny the claim of petitioners 3 and 4 as legal representatives of Sita Bai under the Will nor did he take any steps to file additional counter except stating in evidence as RW1 that the Will is forged and brought into existence to defeat the case of the tenant. In my considered opinion, the circumstances would go to show that the tenant's denial of title of petitioners 3 and 4 is not bona fide and is liable for eviction u/s 10(2)(vi) of the Act.

21. Before parting with the point under consideration, it is necessary to consider the argument of Sri T. Veerabhadraiah with reference to additional counter dated 12-12-1988. In this counter, which is filed after petitioners 3 and 4 are impleaded as legal representatives of Sita Bai, as already noticed, the tenant pleaded that petitioners 3 and 4 are not legal representatives of petitioner No.1 and they are wrongly impleaded in the eviction petition. The learned Counsel also placed reliance on the evidence of RW1 and submits that in pleadings the tenant has specifically denied the title of the landlords and the same is bona fide. Sri S.

Venkat Reddy, learned senior Counsel, however, disputes this. He submits that admittedly the second petitioner, Madhavacharya Joshi was also a landlord for the purpose of the Act and the tenant was depositing the rents in the joint bank account of Sita Bai and Madhavacharya Joshi. It is the law of the pleadings that the admitted facts need not be proved. As the tenant has not specifically denied or challenged the validity of the Will, Section 68 of the Evidence Act has no application in this case. In any event, Section 68 of the Evidence Act cannot be read in isolation and having regard to Section 58 of the Evidence Act as well as Order 8, Rules 3 and 5 of CPC, the tenant is deemed to have admitted the execution of the Will.

22. The tenant has not denied the execution of the Will specifically. He only said petitioners 3 and 4 are not legal representatives of Sita Bai. In his evidence as RW1 he stated that the Will Ex.P6 was fabricated and created for the purpose of the case. Further when petitioner No.2 filed an application being IA No.704 of 1988 u/s 24 of the Act read with Rule 19 of the Rules to bring petitioners 3 and 4 as legal representatives of Sita Bai, it was stated in the affidavit accompanying the said petition that Sita Bai executed Will on 2-10-1987 bequeathing the demised premises in favour of petitioners 3 and 4 and their legal representatives. The tenant did not file any counter to IA No.704 of 1988 specifically denying the allegation that Sita Bai executed the Will. In view of this, the learned Rent Controller while allowing 1A No.704 of 1988 observed that "as no counter is filed the petition is allowed and petitioners 3 and 4 are permitted to come on record as legal representatives of petitioner No. 1". In the background of these facts, the question therefore is whether the pleadings and the evidence are sufficient to deny the relief claimed by the landlord.

23. Before examining this, it is necessary to refer to relevant provisions of CPC and Evidence Act. Order 8 deals with the principles to be followed by defendants while filing written statements which reads as under:

Order 8:

Rule 1.....

2.....

3. Denial to be specific :--It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4.....

5. Specific Denial:--(1) Every allegation of fact in the plaint if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.

24. In *Duwada Nandesam Chowdaiy . State of A.P.*, 1964 (2) An.WR 95, dealing with Rules 3 and 5 of Order 8 this Court laid down as under.

"Rules 3 and 5 of Order 8 Civil Procedure Code, have to be read together and that a plea that the defendant does not admit any of the allegations in the plaint except such as have been expressly admitted and that he puts the plaintiff to the proof of the allegations not so admitted is not a sufficient denial within the meaning of Rule 5; and that, an allegation so denied must be deemed to be admitted. The combined effect of Rules 3 and 5 is that, every allegation of fact in the plaint will be deemed to be admitted if, in the written statement, it is neither specifically denied nor specifically stated to be not admitted".

25. In *Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar*, the Supreme Court explained the effect of Rule 5 of Order 8 as under:

"Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is, that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted".

26. Admittedly, at the stage of allowing application u/s 24 of the Act read with Rule 19 of the Rules the tenant did not file any counter affidavit. Therefore, he is deemed to have admitted the execution of the Will as well as the factum of petitioners 3 and 4 intermeddles with the estate of Sita Bai. The judgments in *Duvvada Nandesam Chowdary* and *Lohia Properties (P) Ltd.*, supports this view. Further, dealing with the case of Will the execution of which is admitted or not denied specifically, this Court as well as Kerala High Court did not insist on proof of the Will.

27. In *K. Stiryanarayana*'s case (supra) one of the questions before the Division Bench of this Court was whether the rival claimants can be permitted to rely on a

Will which was not proved. The Court ruled as under.

"It is true, they are at variance as to the meaning and interpretation of recitals of the Will but the truth of the Will or its existence was never in dispute, therefore, the issue of proof need not be adverted in this case, though attestors were not examined at the trial".

28. In Thayyullathil Kunhikannan's case (supra) a Division Bench of Kerala High Court held that in the absence of any plea as to execution of the Will or the attestation of the Will, the technicality of insisting on examination of attesting witness is misplaced. The statement of law by the division Bench of Kerala High Court is as under.

"Section 68 relates to those documents which require to be proved at the trial of a suit. If by any rule of law or of pleadings, such proof is not required, Section 68 cannot operate to insist on formal proof by calling an attesting witness. Section 58 has to be read as overriding Section 68 and as obviating the necessity for calling an attesting witness, unless the execution of the Will or the attestation is in dispute. In the absence of any such plea in the written statement, it will be the height of technicality and waste of judicial time to insist on examination of an attesting witness, before a Will could be used as evidenceOrder 8, Rule 5 CPC deems the execution of the Will to be admitted in the absence of any denial thereof in the written statement. Examination of an attesting witness is therefore unnecessary when the parties have not joined issue on the validity or genuineness of the Will."

29. It is no doubt true that u/s 68 of the Evidence Act a Will has to be proved by examining attesting witness and proviso to Section 68 exempts registered documents from operation of Section 68 except in the case of a Will. In respect of proof of all documents Section 58 of the Evidence Act cannot be ignored. _Section 58, which overrides Section 68, as observed by the Division Bench of Kerala High Court, reads as under.

"58. Facts admitted need not be proved:--No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

30. Therefore, having regard to the provisions of Sections 58 and 68 of the Evidence Act, Rules 3 and 5 of Order 8 of CPC and the decided cases, and also having regard to the fact that the tenant did not dispute or demur at the stage of bringing legal representatives on record, it must be held that the tenant is deemed to have admitted the execution of Will by Sita Bai. If a tenant in such circumstances denies in his evidence the title of the landlords, it should be

considered as not bona fide denial of title. On this aspect of the matter, both the learned Rent Controller as well as the learned Additional Chief Judge, City Small Causes Court correctly appreciated the facts and in the circumstances of the case, the order of eviction does not suffer from any illegality or irregularity. Point No.I is answered accordingly.

In Re Point No. 2:

As already noticed, initially the eviction petition was filed on the ground that the tenant committed wilful default in payment of rents and that the tenant is guilty of acts of waste and damage to the suit premises. Within a short while after filing the eviction petition the landlords filed 1A No.188 of 1987 for amending eviction petition. The amendment was allowed on 31-8-1987 to the effect that the tenant committed wilful default in payment of rents from January, 1985 to February, 1987 continuously for 26 months. The amendment was also to the effect that the suit premises is required for carrying on business in readymade garments and hosiery by the grand-son of the first petitioner and son of the second petitioner. Paragraph 7(a) of Rent Control Petition deals with this aspect of the matter. When the landlords filed IA No. 188 of 1987 praying the learned Rent Controller to permit them to amend and add paragraph 6(a) - wilful default and paragraph 7(a)-bona fide requirement the tenant filed a counter opposing the application seeking amendment in which the tenant denied the allegation of bona fide requirement of the suit mulgi for the purpose of grand-son of first petitioner. After IA No.188 of 1987 was allowed the landlords carried necessary amendments in the eviction petition. The tenant, however, did not file any additional counter to the main case denying the averments in paragraphs 6(a) or 7(a). Whereas when the landlords filed another application seeking amendment that they require the suit premises for demolition and reconstruction, the tenant promptly filed an elaborate additional counter on 13-9-1993 denying specifically the allegations in paragraph 7 (b), which deals with the ground of demolition and reconstruction.

31. The landlords pleaded in paragraph 7(a) that Anand Joshi, the third petitioner, is carrying on business in readymade garments in a rented premises bearing No.6-3-666/B/2 at Punjagutta, Hyderabad in the name and style of M/s. Hemango Readymade Garments and Hosiery, that the landlords are not in possession of any other non-residential building except the suit premises, that the landlords do not own or possess any other non-residential building in the city of Hyderabad and Secunderabad and that the adjoining inulgi bearing No.5-8-542 wherein Berry's Cafe is located belongs to Sri Ram Joshi and Sri Shyam Joshi, who are the other grand-sons of the first petitioner and therefore they claimed that they are entitled to seek eviction of tenant u/s 10(3)(b)(iii)(a) of the Act.

32. PWs.I and 2 proved all the requirements needed for seeking eviction on the ground of bona fide requirement of non-residential premises. Not only the tenant did not specifically deny by filing additional counter in the main case but he did

not also lead any evidence to contradict the landlords' contention that they bona fide require the suit premises for carrying on business by the third petitioner. The learned Rent Controller relying on the judgments - K. Nagappa Vs. T.D. Krishansa and Another, , Pyari Bai and Another Vs. Tadeka Gowrama, , Ch. Venkata Chalapathi Rao v. A. Narasimha Murthy 1971 RCJ 760, Kalangi Venkateshwara Rao v. Suleman Khan 1972 (2) APLJ 300, Mohel Moonuddin v. A. Yadagiri 1982 (2) ALT 154, Vijayalakshmi Printing Press v. N. Shanker 1990 (1) APLJ 17 (SN), Hyderabad Commercial Corporation v. Nemichand 1990 (1) APLJ 23 (SN) and Chellaram & Co. v. P. Adikumar 1992 (2) APLJ 49 (SN), came to the conclusion that the requirement of the landlords for carrying on business is paramount and that the landlords bona fide require the suit premises for carrying on business by petitioner No.3. Before the learned Additional Chief Judge, City Small Causes Court (appellate authority) the tenant contended that the ground of bona fide requirement was invented for the purpose of the case that if the bona fide requirement was genuine, the landlords ought to have taken the ground when they initially filed eviction petition, that under Ex.R257 lease deed half of the suit mulgi is already leased out to M/s. Shinde Enterprises, therefore, the remaining portion is not sufficient for carrying on business by the third petitioner and that landlords got the adjoining mulgies vacated by other tenants and leased out to others and if they really had bona fide requirement they would not have inducted other tenants without occupying the vacant mulgies. The appellate authority considered the oral and documentary evidence in the light of the submissions made by the tenant and upheld the order of eviction only on the grounds of denial of title and bona fide requirement for carrying on business by the third petitioner.

33. The learned Counsel for the tenant Sri T. Veerabhadraiah submits that the fact that the ground of bona fide requirement was raised subsequently shows that the ground was invented to evict the tenant and that the ground of bona fide requirement is an after thought, that half of the suit schedule mulgi was already leased to others under Ex.R257, that petitioner No.3 cannot carry on his business in the other portion of the suit mulgi admeasuring 7 1/2" x 60", that petitioner No.3 did not seek any amendment after the death of Sita Bai and in the absence of any pleadings no amount of evidence can be looked into and that during the pendency of the rent control proceedings, the adjoining mulgi No.5-8-542 fell vacant and admittedly the same was leased out to others which was not occupied by the landlords, which is indicative of the mala fide intentions of the landlords to evict the tenant.

34. Learned senior Counsel for the landlords submits that when both the Courts below have held on appreciation of the evidence that the landlords' bona fide require the suit premises for carrying on business by the petitioner No.3, the High Court in exercise of power u/s 22 of the Act cannot interfere with the finding of facts, that adjoining mulgi No.5-8-542 does not belong to petitioners 3 and 4, that the same belongs to Ram Joshi and Shyam Joshi and therefore Section 10(3)(b)(Ji) is not a bar for the landlords to seek eviction of the tenant

for the bona fide requirement of carrying on business by petitioner No.3 and that insofar as the lease of half portion of the suit mulgi is concerned, the lease deed Ex.R257 was not acted upon and in any event, it is for the landlords to choose appropriate premises for carrying on business and the tenant cannot dictate to landlords as to how and where to carry on business.

35. These submissions of learned Counsel require examination of three questions.

Whether petitioners 3 and 4 are entitled to possession of the adjoining mulgi No.5-8-542?

It is in the evidence of PWs.1 and 2 that the adjoining mulgi is owned by Ram Joshi and Shyam Joshi, who got the earlier tenant vacated and inducted other tenant. It is also in the evidence that in 1970 Sita Bai, the first petitioner in the Rent Control Case sold Mulgi No.5-8-542 to Ram Joshi and Shyam Joshi. There was no cross-examination on these aspects by the tenant. Sri Veerabhadraiah, however, submits that no sale deed was produced before the Rent Controller to prove the fact that Sita Bai sold the property to Ram Joshi and Shyam Joshi. Either before the Rent Controller or before the appellate authority there was no serious contention on behalf of the tenant on this aspect. Indeed, as already noticed, the tenant did not cross-examine PW1 or PW2 with reference to the sale by Sita Bai in favour of his two other grand-sons, Ram Joshi and Shyam Joshi. Therefore, the submission that petitioners 3 and 4 are entitled to the possession of the suit mulgi No.5-8-542 and therefore their eviction petition on the ground of bona fide requirement of non-residential premises is not maintainable, is without any substance and is accordingly rejected.

What is the effect of Ex.R.257 lease deed on the eviction proceedings ?

Under Ex.R257 Sita Bai and other family members of Madhavacharya Joshi, including petitioners 3 and 4 executed lease deed in respect of property admeasuring 3860.85 Sq.meters in favour of M/s. Shinde Enterprises. In this lease deed premises bearing No.5-8-545 is shown to be in the joint ownership of petitioners 3 and 4 and their mother whereas the suit premises bearing No.5-8-543 is shown to be in the ownership of Sita Bai. Be that as it may, clause (11) of the lease deed is to the effect that a portion of the property in half of 5-8-543 is in possession of M/s. Jalal Watch Company (tenant). At the time of execution of the lease deed as already indicated the suit mulgi exclusively belonged to Sita Bai. The submission now made is that when already half of the suit mulgi was leased out to M/s. Shinde Enterprises the remaining portion is not at all sufficient for carrying on business by the petitioner No.3. While we are on the subject of lease deed it is necessary to refer to Exs.R44 and R45. The tenant filed OS No.2987 of 1980 on the file of the Court of VI Assistant Judge, City Civil Court, Hyderabad for permanent injunction alleging that the landlords and lessee under lease deed under Ex.R257 are trying to forcibly occupy and demolish the suit premises. The lower Court passed an ex parte judgment and decree as evidenced by Exs.R44 and R45. It is also submitted across the Bar that during

the pendency of the said suit there was ad interim injunction against the defendants namely, Sita Bai and Madhavacharya Joshi and M/s. Shinde Enterprises. Relying on this, the learned Counsel for the landlords rightly submits that the tenant continued to be in occupation of the entire suit premises and the lease deed insofar as the suit premises is concerned was not acted upon. PW1 also stated in his evidence that the lease deed Ex.R257 was not acted upon insofar as suit mulgi No.5-8-543 is concerned. There is no cross-examination on this aspect by the tenant. Therefore, I must hold that there is no perversity in the finding recorded by the Courts below. I am of the considered opinion, immediately after coming to know about Ex.R257 the tenant approached the civil Court and obtained initially ad interim injunction and later a decree for perpetual injunction which in effect rendered the lease deed insofar as the suit premises is concerned infructuous as rightly observed by the learned Rent Controller.

Whether the requirement of the landlords for carrying on business by petitioner No.3 is bona fide?

Initially, the bona fide requirement for carrying on business by petitioner No.3 was not taken as a ground of eviction. Later an amendment was sought. The same was allowed by the learned Rent Controller and paragraph 7(a) was added. Though the tenant filed a counter affidavit opposing the application seeking amendment, after amendment was carried out adding paragraph 7(a) the tenant did not file any counter affidavit. Sri T. Veerabhadralah submits that the petitioner No.3 is not a dependent of Sita Bai and therefore he is not entitled to seek eviction on the ground of bona fide requirement u/s 10(3)(b)(iii) of the Act, that after death of Sita Bai petitioner 2001(2) FR-F-36 No.3 did not put forth his personal requirement by amending petition that after leasing out half of the suit mulgi to M/s. Shinde Enterprises the suit mulgi is not at all suitable for carrying on business by petitioner No.3 and that the landlords suppressed the factum of lease in favour of M/s. Shinde Enterprises. These are some of the grounds urged in addition to other grounds which are already dealt with.

36. Whether a landlord can seek eviction of the tenant for the purpose of business of his relative is well settled. A Division Bench of this Court in *M. Srikishan Malpani v. Ayodhya Devi Asaws* 1986 (2) APLJ 327, considered the meaning of the words "for his own occupation" appearing in Section 10(3)(b) of the Act. The Division Bench laid down that whether business in question is that of landlord or not is a question of fact to be determined in the light of the pleadings. Whether and in what circumstances landlord/landlady seek eviction for bona fide requirement of carrying on business by relative is a question of fact and that as a principle of law a landlord can always seek eviction of a tenant from a non-residential premises for the purpose of business of a relative. The relevant passage from the judgment of Division Bench is as follows :

"While it is not possible nor desirable to lay down exhaustively all the situations, a few situations may be mentioned: Where a business is being carried on or proposed to be commenced by a family or for the benefit of family - family being

understood as a unit comprising relatives living together and jointly carrying on business - a non-residential building owned by a member of such family can be sought for by the family. In such a case, it would be the business of landlord - on the principle that it is not possible for dissociate the landlord from his family, nor can he be reasonably asked to separate himself before asking for eviction of the tenant. Similarly, where the building is owned by a landlord, the need of spouse and/or his undivided sons/ unmarried daughters would be the need of the landlord, since all of them constitute one family unit, and cannot be asked to disrupt itself as a precondition for suing for eviction."

37. Therefore, if the landlord is living with members of his family eviction of a tenant can be sought for the purpose of business of such relative. Whether the relative is dependent on the landlord or not is only a relevant consideration in the light of other circumstances and cannot be the only basis for denying the claim. In this case, petitioner No.3 is son of petitioner No.2 and grand-son of petitioner No.1. All of them are living together. Both PWs. 1 and 2 have spoken to about the bona fide requirement of carrying on business as pleaded in paragraph 7(a) of the petition. Further, it has come in the evidence that the third petitioner started business in October, 1985 whereas the eviction petition was filed in January, 1985. As there was sufficient basis in the pleadings which was introduced by way of amendment, even if the petitioner No.3 does not file separate amendment application, claiming bona fide requirement after he was added as petitioner in Rent Control Case, as per Section 24 of the Act it does not make any difference. In any event, u/s 22 of the Act, as already noticed, the evidence led before the Rent Controller and the Appellate Authority cannot be reassessed by the High Court.

38. The power of the High Court u/s 22 of the Act is to examine the legality and regularity and propriety of the order with reference to the grounds taken and urged before the learned Rent Controller or before the appellate authority. These grounds were not specifically taken nor urged before the learned Rent Controller or before the teamed Additional Chief Judge, who decided the appeal. Therefore, the tenant cannot be permitted to raise all these grounds at the stage of revision. In any event, after having considered the rival contentions in the light of the oral and documentary evidence and elaborate orders passed by the learned Rent Controller and the Appellate Authority, it must be held that the order of eviction does not suffer from any irregularity, illegality or impropriety. Sita Bai required the suit mulgi for bona fide requirement of carrying on business by petitioner No.3 and to that effect there are sufficient pleadings and evidence, which has not been effectively opposed with reference to the provisions of the Act. The tenant has been in occupation of a suit mulgi admeasuring 15" s 60" since 1930 paying rent of Rs.130/- per month and when the true owner desires to carry on his business which he admittedly is carrying on in a rented premises elsewhere it is only reasonable to order eviction especially when the landlords have proved grounds of eviction. Point No.2 is answered accordingly.

39. For the above reasons, the civil revision petition fails and the same is accordingly dismissed. There shall be no order as to costs.