
(2022) 01 TEL CK 0003

In the Telangana High Court

Case No : Civil Revision Petition No. 3930, 5113 Of 2015

K. Momin Bai

APPELLANT

Vs

M.N. Subramanian

RESPONDENT

Date of Decision : 05-01-2022

Acts Referred:

Registration Act, 1908 — Section 17, 17(1), 49
Indian Stamp Act, 1899 — Section 17(d)

Citation : (2022) 01 TEL CK 0003

Hon'ble Judges : P.Sree Sudha, J

Bench : Single Bench

Advocate : R A Achuthanand, Palivela Satyaraja Babu

Final Decision : Dismissed

Judgement

1. These Civil Revision Petitions are preferred by the petitioner aggrieved by the orders dated 27.07.2015 passed in R.A.Nos.173 and 91 of 2013 on

the file of the learned Additional Chief Judge, City Small Causes Court, Hyderabad, confirming the order dated 06.08.2013 in R.C.No.473 of 2008 on

the file of the learned II Additional Rent Controller, City Small Causes Court, Hyderabad, and the order dated 07.05.2013 in R.C.No.453 of 2008 on

the file of the learned III Additional Rent Controller, City Small Causes Court, Hyderabad.

2. The petitioner in both these revisions is the respondent-tenant in the above R.Cs. and the respondent herein is the landlord. For better understanding

of the matter, the parties hereinafter referred to as 'tenant' and 'landlord'.

3. The brief facts of the case is that the respondent herein had let out his mulgi bearing H.No.1-2-606/198 situated at Banda Maisamma, Indira Park

Road, Hyderabad, to the petitioner herein in the year 1996 to carry on the business of Medical and General Stores. Since the petitioner herein is not paying the rents and the mulgi which was let out to the tenant is required for the personal use, the landlord filed the R.C.No.473 of 2008 seeking eviction of the petitioner and he also filed R.C.No.453 of 2008 seeking fixation of fair rent in respect of the petition schedule property. The learned Rent Controller, after considering the entire evidence on record, allowed both the cases and directed the tenant to vacate and hand over the vacant possession of the petition schedule premises to the landlord within two months from the date of the order, solely on the ground of wilful default. Aggrieved by the said orders, the tenant filed in R.A.Nos.173 and 91 of 2013, both the appeals were dismissed confirming the judgement of the Rent Controller. But, the Appellate Court went ahead and calculated the rent with an enhancement @10% for every two years. Aggrieved by the said orders, the tenant preferred these revisions.

4. The landlord also filed an application before the Rent Controller in R.C.No.453 of 2008 seeking fixation of fair rent. The trial Court, after hearing both the parties and after considering the evidence on record, directed the tenant to pay rent @ Rs.2500/-p.m. from the date of filing of the petition, with a future enhancement of 10% for every two years and also directed her to pay the arrears of rent within two months from the date of the order. While passing the above order, the trial Court observed that the rent of Rs.750/-p.m. was meagre since the mulgi is situated in one of the prime business localities in Hyderabad.

5. The contention of the tenant is that she filed a Section 8 application in R.C.No.341 of 2008 which was allowed by the court on 08.02.2010 holding that the rent is to be deposited @ Rs.650/-p.m. and the said order became final and further the Court directed her to deposit the rent from May 2008 to April 2010, i.e., from the date of filing the petition to the date of the order @ Rs.650/- p.m. and from May 2010 onwards, to deposit the said amount of Rs.650/- on or before 10th of every month into the Court. The petitioner would further contend that as there is no appeal or revision filed against the said order, it operates as constructive res judicata and that the findings of the trial Court in R.C.No.473 of 2008 would suffer from legality.

6. She would also contend that it is not the case of the landlord that rent has to

be enhanced by 10% after completion of every three years but both the Courts below observed that rent has to be enhanced. Learned counsel for the tenant would aver that no relief may be granted beyond the scope of the pleading taken by the parties. The appellate Court applying an enhancement of 10% of rent for every two years and holding that tenant has to pay the balance of Rs.23,822,12/- is against the basic pleadings on record.

7. Another major contention raised by the tenant is that the lease deed which is not registered under Stamps and Registrations Act cannot grant an enforceable right with reference to the quantum of rent. As per Section 17 of the Registration Act, if the document is taken for collateral purpose, the terms and conditions of the document cannot be looked into. The said document is valid only for a period of eleven months. As per Section 49 of the Registration Act, it cannot be used for any other purpose than establishing the relationship of tenancy. It is also contended that as per Section 17(d) of the Stamp Act, lease of immovable property from year to year and a term exceeding one year has to be registered. As the concerned document is not registered, it can be seen only to the extent of nature of tenancy, i.e., whether petitioner is a tenant or not, and therefore, the finding of the trial Court is contrary to the provision of Section 17(1) of the Registration Act.

8. Learned counsel for the tenant relied upon GIRI YADAV V/s. RAMESH GOUD 2005 (4) ALT 411, in which it was held that an unregistered lease deed is admissible in evidence for collateral purpose for proving possession of a party. He also relied upon SARDAR AMAR SINGH V/s.

SURENDER KUMAR 1995 MP 230 (FB) wherein it was held that an unregistered lease deed can be shown to prove the nature and character of the possession but it cannot be used to prove the terms of the lease.

9. Therefore, the tenant would contend that the trial Court failed to consider that the terms of the lease deed cannot form part of the enforceable contract. At the most it can be held that the petitioner is a statutory tenant under Rent Control Act.

10. He would also contend that there is no evidence to prove that the rent is enhanced to Rs.750/- p.m. and then to Rs.4,500/- p.m. in December 2007 and as such, learned counsel requested the court to set aside the order dated 27.07.2015 passed in R.A.No.173 of 2013.

11. The contention of the landlord is that M.B.Narayana, the father of the

respondent, was the absolute owner and possessor of the house bearing No.1-2-606/198 situated at Banda Maisamma, Indira Park Road, Hyderabad. He had executed a lease deed in favour of the petitioner on 01.04.1992 leasing out the mulgi to carry on business of medical and general stores for a sum of Rs.650/- p.m., exclusive of electricity charges and other charges for a period of three years with the rent being payable on or before 10th of every month. M.B.Narayana died in 1996 and leaving the respondent only son as sole legal heir. The respondent inherited the property and became the absolute owner.

12. Thereafter, the landlord filed the R.C.No.473 of 2008 for eviction of the tenant. Aggrieved by the order therein, the tenant preferred an appeal, wherein the order was upheld and the tenant, who had deposited Rs.15000/- with the father of land owner at the inception of tenancy, was directed to pay an amount of Rs.23,822.12/- of arrears after deducting Rs.15,000/-.

13. Perusal of Clause 15 of the Lease Deed entered into between the parties dated 01.04.1992 clearly shows that initially the lease is for a period of three years starting from 01.04.1992. After the expiry of the above three years period, by mutual consent of both sides, the same may be extended for a further period, in writing, on such terms and conditions as agreed. As per the Clause 16, in case the lease is not extended and the lessee continues to be in possession, the lessee shall pay an enhanced rent of 10% for every two years on the existing rent.

14. The rent controller in R.C.No.473 of 2008 held that the landlord categorically established that the tenant committed wilful default in payment of enhanced rent of 10% as per Exs.P5 and R1 lease deed which is a document admitted by both the parties. Thus, the respondent is liable to be evicted under Section 10(2)(i) of the Act.

15. Though the landlord approached the Rent Controller for eviction on the grounds of bona fide requirement, subletting by the tenant and wilful default, the trial Court held that the landlord failed to establish the other two grounds of bona fide requirement and subletting of the premises by the tenant, but ordered for eviction on the ground of wilful default.

16. As such the trial Court relying upon KANUBOINA VENKATA RAMAIYYA V/s. PALAKURU RUKMINAMMA 1997 (4) ALD 752, deducted the enhanced rent of 10% from the deposit amount, and directed her

to pay the balance of Rs.6,200 to the landlord. On appeal, by the tenant against the said order, though the appellate Court confirmed the order of the trial Court, it calculated the enhanced rent @10% periodically since 1995 and after deducting an amount of Rs.15,000/- which was deposited by the tenant directed the tenant to pay arrears of Rs.23,822/-.

17. Now the tenant contends that the said lease deed is not a registered document and thus the contents of the document cannot be looked into.

Moreover, it is not the case of the landlord, regarding the enhancement of the rent, as such, the said finding of the appellate Court regarding enhancement of the rent is illegal.

18. The lease deed dated 01.04.1992 is the basis for the entire litigation. As per the said lease deed, the petitioner herein is a tenant of the respondent

and she is running a medical and general store in the mulgi of the respondent from 1992 onwards at a rent of Rs.650/- p.m. Initially, the tenant

approached the Court relying upon the same document, for deposit of rents @ Rs.650/- p.m. in R.C.No.341 of 2008 and the Court fixed quantum of

rent at the rate of Rs.650/- per month instead of Rs.4,500/- per month basing on the said lease deed.

19. It is not fair on the part of the tenant to rely upon Clause 3 of the same lease deed when he intended to deposit the rent @ Rs.650/-p.m. and to

deny Clause 16 which speaks of the enhanced rent of 10% for every two years. Therefore, the conduct of the tenant clearly shows that she is running

business in the mulgi with a minimal rent of Rs.650/- p.m. and even after enhancement of 10%, the rental amount paid by her is meagre. As such she

is not inclined to vacate the same and thus she preferred appeal against the orders of the learned Rent Controller and then approached this Court

against the order of the appellate Court in the R.A.s. Therefore, the argument of the tenant herein that the contents of the document cannot be looked

into on the ground that it is unregistered document is not sustainable. The appellate Court rightly considered the Clause 16 of the lease deed and

calculated the rents with an enhancement @ 10% for every two years and deducted the interest free refundable amount of Rs.15,000/- given by the

tenant and directed her to pay Rs.23,822/-.

20. For the foregoing reasons there are no merits in the arguments of the tenant and the present revision petitions are dismissed by confirming the

order of the Appellate Court dated 27.07.2015. This Court also finds no reason to interfere with the fare rent arrived at by the Rent Controller and

approved by the appellate Court at the rate of Rs.2,500/- with an enhancement of 10% every two years.

21. The Civil Revision Petitions are accordingly dismissed confirming the orders dated 27.07.2015 passed in R.A.Nos.173 and 91 of 2013 by the

Appellate Court. Tenant is directed to vacate the suit schedule premises within two months from the date of the order.

22. Miscellaneous Petitions, if any, pending in these revisions shall stand dismissed in the light of this final order.