

(1999) 01 AP CK 0037
In the Andhra Pradesh High Court
Case No : Second Appeal No. 1 of 1995

Kamarapu Veera Laxmi and Others

APPELLANT

Vs

Vemula Krishna Murthy

RESPONDENT

Date of Decision : 18-01-1999

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 32(1)
Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 6

Citation : (1999) 01 AP CK 0037

Hon'ble Judges : A. Hanumanthu, J

Bench : Single Bench

Advocate : I. Aga Reddy, for the Appellant; Y. Rama Rao, for the Respondent

Final Decision : Dismissed

Judgement

A. Hanumanthu, J.—This second appeal is directed against the judgment dated 30.3.1994 passed by the II Additional District Judge, Karimnagar, in A.S.No.9 of 1991 confirming the judgment and decree passed by the Principal District Munsif, Karimnagar, in O.S.No.980 of 1983, dated 3.5.1991.

2. The appellants herein are the defendants and the respondent herein is the plaintiff in the said O.S.No.980 of 1983. For the sake of convenience, they are referred as such hereafter.

3. The facts, in brief, resulting in filing of this appeal are as under:

(i) The first appellant-defendant is the landlord of the mulgi bearing No.2-6-3 situated at Office Road, Karimnagar. The respondent-plaintiff is the tenant for the said premises for the last 21 years. He is running a cloth shop under the name and style "Sri Satyanarayana Vastralayam" in the mulgi. The first defendant refused to receive the rents from 1.8.1983. Therefore, the plaintiff sent the rent due for three months through money order on 17.11.1983, but the same was

refused by the first defendant. Thereupon the plaintiff filed R.C.C.No.5 of 1983 on the file of the Rent Controller, Karimnagar, and obtained orders according to the which the plaintiff deposited the rent into Court. Apprehending at the defendants may forcibly evict the plaintiff from the suit mulgi and occupy the same by taking the law into their own hands, the plaintiff instituted the suit O.S.No.980 of 1983 for permanent injunction restraining the defendants and their men from interfering with his peaceful possession and enjoyment of the suit mulgi. The plaintiff also filed an interlocutory application No. 1381 of 1983 for granting temporary injunction and interim injunction was granted in favour of the plaintiff. In spite of that interim injunction order against them, all the defendants who are inter-related, trespassed into the suit mulgi by breaking open the lock on the intervening night of 7/8.2.1989, removed in the stock-in-trade, cup boards and furniture and brought them in a lorry and unloaded them in front of the house of the plaintiff and the plaintiff coming to know fit preferred a complaint in the police station. Subsequent to forcible dispossession of the plaintiff of the suit mulgi, the plaintiff got his plaint amended for the relief of recovery of possession on the ground that he has been forcibly dispossessed and that he is entitled to continue in possession till he is dispossessed through due process of law.

(ii) The appellants-defendants resisted that suit. It is clear case that the plaintiff had committed wilful default in payment of rent, that they never refused to receive the rent, that they never trespassed into the suit premises and that they did not remove the stock-in-trade, cup boards, furniture etc., and did not throw them in front of the house of the plaintiff. It is their positive plea that the defendants made demand for arrears of the rent due, the plaintiff with a view to evade payment, vacated the suit premises voluntarily prior to 7.2.1989 informing the defendants. It is also their plea that as the plaintiff had sub-let the premises to one Mohan. They have also pleaded that the Civil Court has no jurisdiction to entertain the suit and that the plaintiff cannot seek the relief of possession of the suit mulgi.

(iii) The relevant issues were settled based on the pleadings. On behalf of the plaintiff, P.Ws. 1 to 3 were examined and Exs. A-1 to A-3 were marked. On behalf of the defendants, D.Ws. 1 to 3 were examined and no documents were marked. The plaintiff got himself examined as P.W.1. The second defendant got himself examined as D.W.1.

(iv) On a consideration of the oral and documentary evidence on record the trial Court held that the plaintiff was forcibly evicted from the suit premises on the intervening night of 7/8.2.1989 and that the plaintiff's suit is maintainable. Therefore, the trial Court directed that the plaintiff be put in possession of the suit mulgi after evicting the defendants and their men claiming under them. Aggrieved of that Judgment and decree the defendants preferred the appeal A.S No.9 of 1991. On re-appreciation of the entire evidence on record, the learned Additional District Judge confirmed the findings of the trial Court and dismissed

the appeal with costs. Aggrieved by the judgment of the lower appellate Court, the defendants have come up with this second appeal.

4. Heard the learned counsel on either side. The learned Counsel for the appellants took me through the impugned judgment of the first appellate Court as well as that of the trial Court and also the evidence on record.

5. The only substantial question of law raised by the learned Counsel for the appellants is whether the Civil Court has got jurisdiction to try the suit as the parties to the suit are tenant and the landlords and that they are governed by the provision of A.P.Buildings (Lease, Rent and Eviction) Control Act (XV of 1960) (hereinafter called as "the Act").

6. Admittedly, the suit mulgi belongs to the first defendant and it has been let out to the plaintiff. Thus there is a relationship of landlord and tenant between the parties. It is also not disputed that when the first defendant refused to receive the rent, the plaintiff filed R.C.C.No.5 of 1983 on the file of the Rent Controller, Karimnagar, and obtained orders under which he was directed to deposit the rent into Court. As seen from Ex. A-3 the cash receipt issued by the Court, the plaintiff deposited the arrears of rent before the Rent Controller on 12.12.1983. Apprehending forcible dispossession the plaintiff filed the suit for mere injunction restraining the defendants and their men from interfering with his peaceful possession and enjoyment of the suit mulgi and he also obtained interim injunction pending disposal of the suit. While the injunction order was in force, and pending disposal of the suit, the plaintiff was said to have been forcibly evicted on the intervening night of 7/8.2.1989. Therefore, the plaintiff got his plaint amended for recovery of possession u/s 6 of the Specific Relief Act. It is vehemently contended by the learned Counsel for the appellants that in view of the existing relationship of landlords and tenant between the parties, the plaintiff ought to have resorted for taking steps under the Act and that the Civil Court has no jurisdiction to entertain the suit.

7. The learned counsel for the respondent-plaintiff, on the other hand, submits that under the provisions of the Rent Control Act there are not explicit provisions either to seek an order on injunction against the landlord restraining him from forcibly evicting the tenant or for recovery of possession of the premises from which the tenant was forcibly evicted by the landlord and therefore the tenant has no other go except to invoke the jurisdiction of the Civil Court either to seek injunction order to file a suit for recovery of possession u/s 6 of the Specific Relief Act.

8. On a careful consideration of the submissions made by the learned Counsel on either side, I am satisfied that there is much force in the contentions raised by the learned Counsel for the respondent-plaintiff and that I have no hesitation to hold that the Civil Court has got jurisdiction to entertain the suit in the facts and circumstances of this case.

9. It is concurrently held by both the Courts below that the plaintiff has been

forcibly evicted by the defendant without resorting to due process of law on the intervening night of 7/8.2.1989 while the interim injunction order was pending against them. This is a finding of fact by both the Courts below and it is open for this Court to interfere with the said findings of fact while exercising jurisdiction u/s 100 CPC. The learned Counsel for the appellants failed to point out the relevant provisions under the Rent Control Act where under the tenant who is forcibly evicted by his landlord can resort for recovery of possession of the premises of which he is the tenant. In fact he admits that there is no such provision in the Act. He also contends that Section 10 of the Rent Control Act relates to eviction of tenants by the landlords and it is categorically provided under the said Section that a tenant shall not be evicted except in accordance with the provisions of Section 10 or Sections 12 and 13 of the Act. The learned counsel for the appellants further submits that by necessary implication the tenant can as well seek for an order of injunction to protect his possession from the threatened dispossession by the landlord and therefore the tenant ought to have approached the Rent Controller and obtained an injunction order instead of approaching a Civil Court. The learned Counsel for the appellants also relied on a decision of this Court in Narsingh Pershad Vs. Ranga Reddy & Ors., 1994 APHC 161 - CRP No.898 of 1972. That decision was delivered under A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950. In that case, a tenant filed a petition u/s 32(1) of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 for issuing an injunction against the landlord who was trying to evict him from the land and interfering with his possession. The Tahsildhar, on enquiry, acting in accordance with the instructions contained in Circular No. 1517/A issued by the Board of Revenue dated 30.7.1952, issued the injunction as prayed for by the tenant. On appeal by the landlord, the District Revenue Officer confirmed the order passed by the Tahsildhar. In the revision filed in the High Court, it was contended that the Tahsildhar had no power u/s 32(1) of the said Act to issue such an injunction for maintenance of possession of the tenant and that the only remedy available to the tenant was to have recourse to the Civil Court. This Court while observing that issuing an injunction, though not directly provided for, is an ancillary power that flows from the duty of Tahsildhar to protect the possession of the tenant, held that the Tahsildhar could certainly issue an injunction order. But this cannot be an authority for the proposition of law that the tenant cannot approach the Civil Court to protect his possession when his right for possession is being threatened by the landlord. Further, it is nowhere stated in that decision that Civil Court has no jurisdiction to entertain the suit for granting injunction when the right of possession of the tenant has been threatened. As earlier stated, the learned Counsel for the appellants has not disputed that there is not specific provision in the Rent Control Act to come to the rescue of the tenant when his right for possession has been threatened by the landlord or the tenant was forcibly evicted by the landlord without resorting to due process of law. Under those circumstances, the approach of the tenant to a Civil Court to safeguard his right of possession or for recovery of possession cannot be found fault with. Therefore, the filing of the suit by the plaintiff initially

of permanent injunction when his right for possession was being threatened by the landlord-defendants and subsequent amendment for recovery of possession soon after he was forcibly evicted from the suit mulgi in a Civil Court is maintainable.

10. The plaintiff is entitled for recovery of possession u/s 6 of the Specific Relief Act which reads as under;

"6. Suit by person dispossessed of immovable property.- (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this Section shall be brought-

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this Section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof."

It is clear from a perusal of this Section that when a tenant who is in actual physical possession of the demised premises is dispossessed, he can sue under this Section. In the instant case, it is not disputed that the plaintiff was in actual physical possession of the suit premises till he was forcibly dispossessed on the intervening night of 7/8.2.1989. His deprivation from such physical possession, by the appellants without resorting to due course of law attracted the provisions of the Section 6 of the Specific Relief Act, in the absence of any specific provision in the Rent Control Act for recovery of such possession. This view of mine gets support from the observations of the Supreme Court in *Samir Sobhan Sanyal Vs. Tracks Trade Pvt. Ltd. and others*, . In that case the appellant was inducted as a tenant on behalf of M/s Indian Foils Ltd. into the demised premises. This property belonged to a landlady who had entered into a lease with M/s Indian Foils Ltd. The possession of the premises was also given to the appellant. Subsequently, the landlady had entered into an agreement with sixth respondent for the sale of that property. Subsequently, the sixth respondent filed the suit for specific performance of the agreement of sale and he was also put no notice that the appellant was in possession and enjoyment of the demised premises. The appellant was not made as a party to the suit for specific performance of the agreement of sale or to the execution proceedings that ensued thereafter. The appellant filed an application under Order 21 Rules 98 and 99 CPC claiming adjudication of his right to remain in possession. Even before that application was disposed of, he was evicted from the premises without following the due process of law. Under those circumstances. Their Lordships of the Supreme Court

observed in para 6 thus:

"Since the letter of law should strictly be adhered to, we find that high handed action taken by the respondent Nos.1, 3 and 6 in having the appellant dispossessed without due process of law cannot be overlooked nor condoned. The Court cannot blink at their unlawful conduct of dispossess the appellant from the demised property and would say that the status quo be maintained. If the Court gives acceptance to such highhanded action, there will be no respect for rule of law and unlawful elements would take hold to the due process of law for ransom and it would be filed day for anarchy. Due process of law would be put to ridicule in the estimate of the law abiding citizens and rule of law would remain a mortuary."

The Apex Court allowed the appeal of the appellant and directed the respondents to put the appellant in possession within 24 hour.

11. The facts in that case are similar to the facts in this case. As earlier stated, the respondent-plaintiff who was in actual physical possession of the demised premises was forcibly evicted by the defendants without following the due process of law and as such the plaintiff is entitled for recovery of possession u/s 6 of the Specific Relief Act. Hence, the plaintiff's suit is maintainable even though there is a relationship of landlord and tenant between the parties to the suit.

12. In the result, I do not find any merits in this appeal and the same is liable to be dismissed. Accordingly, the appeal is dismissed with costs. The judgment and decree under appeal are confirmed. However, it is needless to mention that after the plaintiff was put in possession of the suit mulgi by the defendants, the defendants are at liberty to seek eviction of the plaintiff under due process of law.