

(1993) 03 AP CK 0020

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3255 of 1991

Kolla Veeraswamy (died per L.Rs.) and others

APPELLANT

Vs

Gondesi Nagara-theemma and others

RESPONDENT

Date of Decision : 11-03-1993

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 22
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1993 AP 333 : (1993) 1 ALT 537

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : S.S.N. Prasad, for the Appellant; T. Veerahadrayya, for the Respondent

Judgement

1. The challenge in this revision petition is that the ground on which eviction of the 1st petitioner tenant was sought no more exists, as the landlady who sought the petition schedule premises for bona fide requirement has since died.

2. Sri Satyanarayana Prasad, learned counsel for the petitioner tenants, states that originally the eviction petition R.C.C. No. 108 of 1980 was filed before the Rent Controller, Rajahmundry, on two grounds viz. (1) acts of waste by the tenant and (2) bona fide requirement for starting business; that the bona fide requirement of the landlady for -starting business was not existing as on the date of the order of the lower appellate Court, as the landlady died and therefore the lower appellate Court ought to have rejected the eviction petition. It is further contended that the decisions of the Supreme Court from time to time would indicate that though normally the High Court would not interfere when there is a concurrent finding by both the courts below, as the High Court cannot advert to itself as a second Court of first appeals, yet the recent decisions of the Supreme Court would indicate that when revisions are filed under the Rent Control Act, unlike revisions under S. 115 of the Civil Procedure Code, the scope of enquiry is more wider. Placing reliance on latest decisions of the Supreme

Court, it is urged by Sri Prasad that in the instant case, interference of this Court is very much needed.

3. In order to appreciate the contentions of Sri Satyanarayana Prasad, it is relevant to examine the grounds urged in the eviction petition. The landlady contended that the tenant was inducted into the demised non-residential premises on 1-4-1978 for a rent of Rs. 8,000/- per annum; that the tenant executed a lease-deed on 25-10-1978 that the premises was let out till 31-3-1980 and that the tenant committed act of waste, neglected the petition schedule premises and stored fertilizer bags causing damage to the floor and inner walls. The other grounds urged were that the landlady's family originally started business as general merchants in 1955 and was conducting business in tobacco, pulses, foodgrains, etc. in the name and style of "Gondesi Yellayya & Sons"; that since the landlady's husband became ill, the wholesale business was suspended temporarily in the year 1964 that the petitioner is willing to start to wholesale business in tobacco and pulses in the name of her son Janakirama Reddi and that, therefore, the petition schedule property is sought for her occupation. Before the Rent Controller, the tenant filed a counter contending that he was in the schedule premises from 1967 onwards; that the original rent of Rs. 2,200/- has been increased up to Rupees 8,000/- per annum by 1-4-1979 that when the landlady demanded enhanced rent of Rupees 10,000/- per annum, the tenant did not agree and, therefore, the petition is filed for eviction; that there is no bona fide requirement for personal occupation of the landlady; that in order to avoid further litigation, the tenant offered Rs. 8,500/- per annum and that the tenant did not commit any acts of waste and neglect the premises as contended by the landlady.

4. On behalf of the landlady, P.Ws. 1 to 3 were examined and Exs. A1 to A11 were marked. The tenant examined himself as R.W. 1 on the basis of the evidence let in, the Rent Controller found that the requirement of the petition schedule premises by the landlady is bona fide and that the tenant did not commit any acts of waste or damage to the schedule premises. Consequently, the Rent Controller ordered eviction of the tenant from the premises on the ground of bona fide requirement. As against such finding R.C.A. No. 3/86 was filed before the lower appellate Court and the lower Appellate Court took upon itself examining the following contentions raised by the tenant.

1. Whether the landlady requires the petition schedule premises bona fide for the purpose of starting business by her second son?

2. Whether the tenant is guilty of any acts of waste or damage in the schedule premises?

5. It is the finding of the lower appellate Court that the landlady got issued Ex. A2 notice to the tenant, for which the tenant got issued Ex. A3 reply. In Ex. A3 the tenant alleged that the landlady demanded enhancement of Rent of Rs. 10,000 / - but he was sending cheque for Rs. 8,500/-. When that fact was

brought to the notice of the tenant's counsel under Ex. A4, the tenant's counsel sent another cheque for Rs. 500/- to the landlady's counsel along with Ex. A5. It was contended before the lower appellate Court that the eviction petition was filed to extract higher rate of rent from the tenant. On the question of demanding Rs. 10,000/- by the landlady, the lower appellate Court held that there is no independent evidence on behalf of the tenant to prove this allegation. Therefore, the lower appellate Court found that the allegation made by the tenant was not proved and the requirement of the landlady for the purpose of starting business in the name of her second son was bona fide. Thus, the lower appellate Court confirmed the finding of the Rent Controller in so far as the bona fide requirement is concerned. In so far as the second ground viz. act of waste or damage to the schedule premises, both the courts found that the landlady failed to establish the same.

6. In the wake of the finding of the Courts below, the only aspect that falls for consideration is whether the requirement of the landlady is bona fide or not and whether this Court can interfere with the concurrent finding of the Court below as to the bona fide requirement?

7. It is not disputed that the second son of the landlady is unemployed. It is also not in dispute that the family business of the landlady is trading in pulses and other foodgrains. The only aspect that is sought to be agitated is that when the landlady, who filed eviction petition on the ground of bona fide requirement for starting business, herself died, whether the bona fide requirement still subsists. It is categorically averred in the eviction petition that the landlady required the premises for the purpose of starting business in the name of her second son, who is unemployed; that she has three sons -- the eldest son is attending to timber business, the third son is studying and the second son Janakirama Reddy has no vocation; that she intended to revive the old business of Gondesi family and that, therefore, she was anxious and willing to start the wholesale business in pulses and tobacco in the name of her second son Janakirama Reddy in the petition schedule premises. When there is a categorical averment in the pleadings that the requirement is for starting business in the name of the landlady's second son, who is not gainfully employed elsewhere, even though the landlady, who filed the eviction petition, is no more, yet it cannot be said that the requirement ceases on account of her death. The premises is sought for the purpose of reviving the family business which would be looked after by the landlady's second son. When that requirement is very much available I am afraid, I cannot accept the proposition of Sri Prasad that when the landlady who filed the eviction petition is no more, the requirement ceases to exist and that therefore, the petition ought to have been dismissed.

8. The decision in *Dattonpant Gopalvarao Devakate Vs. Vithalrao Maruthirao Janagaval*, and *Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar*, would go to show that High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the

subordinate authority. The power conferred on the High Court under the Rent Control Act may not be as narrow as the revisional power of the High Court under S. 115 of the Civil Procedure Code, but it is not wide enough to make High Court as a "Second Court first appeal". The later decisions of the Supreme Court in *Ram Dass Vs. Ishwar Chander and Others*, and *Rai Chand Jain Vs. Miss Chandra Kanta Khosla*, on this aspect would go to indicate that the High Court in its revisional jurisdiction under the Rent Control Act can interfere with the finding of fact of the Court below in given circumstances. In *Ram Dass's* case (supra) a Full Bench of the Supreme Court while dealing with S. 15(5) of the East Punjab Rent Restriction Act 1949, held (at page 1424) :

"Section 15(5) of the Act enables the High Court to satisfy itself as to the "legality and propriety of the order under revision, which is, quite obviously, a much wider jurisdiction. That jurisdiction enables the Court of revision, in appropriate cases, to examine the correctness of the findings of facts also, though the revisional Court is not "a second Court of first appeal". Thus the plea that it was impermissible for the High Court in its revisional jurisdiction to interfere with the finding of fact recorded by the appellate authority, however erroneous they be, would not be, having regard to the language in which the revisional power is couched, tenable. In a appropriate case, the High Court can re appraise the evidence if the findings of the appellate Court are found to be infirm in law."

9. In *Rai Chand Jain* case (supra) the Supreme Court while dealing with the question of revisional powers in proceedings under S. 15(5) of the East Punjab Urban Rent Restriction Act (3 of 1949) held (at page 749) :

"On a plain reading of S. 15(5) it is clear and transparent that the revisional jurisdiction conferred on the High Court is much wider than the jurisdiction provided under S. 115 of the C.P.C. The High Court while exercising this jurisdiction is competent not only to see the irregular or illegal exercise of jurisdiction but also to see to the legality or propriety of the order in question."

10. *Sri Prasad*, relying on the later two decisions of the Supreme Court, has tried to persuade this Court to say that in given circumstances, the High Court could interfere and reappraise the entire evidence if the findings of the appellate Court are found infirm in law. There is no dispute as to the principle laid down in the aforesaid two decisions of the Supreme Court. But the question still remains to be seen is whether the facts and circumstances of the case on hand would warrant interference by this Court. In view of the evidence brought out by the parties and the finding arrived at by the Courts below on the aspect of bona fide requirement, in my opinion, there is no scope for this Court to interfere with the finding, as the finding is based on proper appreciation of evidence.

11. Under these circumstances, I do not find any reasons to interfere with the order impugned. The revision petition is accordingly dismissed. No order as to costs.

12. Three months" time from today is granted to vacate the suit premises.

13. Revision dismissed.