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**(2003) 11 AP CK 0026**  
**In the Andhra Pradesh High Court**  
**Case No : CRP No. 103 of 1997**

Kopvvuri Subbaraju

APPELLANT

Vs

Karri Baburao and Others

RESPONDENT

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**Date of Decision :** 07-11-2003

**Acts Referred:**

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 13

**Citation :** (2004) 1 ALD 633 : (2004) 4 ALT 61

**Hon'ble Judges :** B. Prakash Rao, J

**Bench :** Single Bench

**Advocate :** Madinarayana Raju, for the Appellant; T.S. Anand, for the Respondent

**Final Decision :** Dismissed

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## Judgement

B. Prakash Rao, J.—The petitioner, who is the landlord, by way of revision under Article 227 of the Constitution of India seeks to challenge the orders dated 16-12-1996 passed in A.T.A. No. 3 of 1995 on the file of the District Judge-cum-Appellate Authority, at Visakhapatnam, allowing the appeal at the instance of the respondents-tenants, and setting aside the orders of eviction passed in A.T.C No. 15 of 1991, dated 20-2-1995 on the file of the Special Officer-under Andhra Tenancy Act-cum-Principal District Munsif at Yellamanchili.

2. The petitioner has initially filed the application u/s 13 of the A.P. (Andhra Area) Tenancy Act, 1957 (for short "the Act") seeking eviction of the respondents-tenants from the land in Sy.No. 469, admeasuring Ac.6.00, situated at Geddapalem of Koruprolu Village, alleging that the father of Respondent No. 1 was the cultivating tenant of the suit land for the last 20 years under the petitioner's vendor, namely, Sri Achalla Appala Narasimham, who sold the land to the petitioner under the registered sale deed dated 19-7-1979 and was put in possession. The said tenant had relinquished all his rights as per the deed dated 27-7-1979 after receiving a sum of Rs. 5000/- and delivered the possession. However, subsequent to the death of the said tenant, the Respondent No. 1, who is the son and Respondent Nos. 2 and 3, who are the daughters were interfering

with his possession of the property. Therefore, he filed a suit in OS No. 37 of 1979, which was renumbered on transfer as OS No. 6 of 1984 on the file of sub Court at Anakapalle for perpetual injunction. After regular trial, the suit was dismissed holding that the petitioner is the purchaser but not in possession and the father of the respondents is tenant and that alleged surrender is not valid, and contrary to Section 14 of the said Act. Since the respondents are in possession, and they have committed default in payment of rents, the petition is filed.

3. Contesting the application, the respondents denied the allegations in the application, except to the extent of proceedings in the suit. It is their case that there is no default in payment of rents. Further, it is stated that during the pendency of the suit, a receiver was appointed and the lease hold rights were auctioned and the amounts were deposited. As against the dismissal of the suit by the Trial Court, the petitioner has unsuccessfully approached to the District Court and this Court. These facts have been suppressed by the petitioner. Hence the petition is liable to be dismissed.

4. After the enquiry, during which, both sides led evidence both oral and documentary, the primary authority, the Special Officer, Yellamanchili, on a consideration of the material on record, allowed the application and ordered eviction, holding that the respondents have failed to pay the rents for the year 1989-90 and thereby committed default and rendered themselves for eviction u/s 13(a) of the Act. While, coming to the said conclusion, the entire accounting was gone into by looking into the varied payments made all along, including the deposits made at various points of time, in the civil proceedings and also in the earlier ATC No. 7 of 1974. However, on an appeal by the respondents, the lower appellate authority under the Act, namely the District Judge, on a reappraisal of the contentions urged on either side, allowed the appeal and set aside the orders of eviction, proceeding on the ground that the burden is on the landlord to prove that there was default in payment of rents. Since the petitioner had purchased the land on 19-7-1979 and it is not his case that there was any default prior to his purchase, the alleged plea of relinquishment by the tenant has already been negated in the civil proceedings. There is no specific plea on the duration of default. In view of the orders of injunction and the appointment of receiver in the civil suit, the tenants were prevented from entering the land and were put in possession only on 5-2-1989 and therefore, they cannot be accountable for the rents for the period from 1979-80 to 1988-89. They can be, thus accountable from the year 1989-90. This application is filed on 20-9-1991, by which date, the rents due were for the year 1989-90 and 1990-91. The respondents have deposited Rs. 600/-each on 29-3-1989, 29-3-1990 and 15-3-1991 respectively. Therefore, it was held that by no stretch of imagination, it can be said that the respondents have committed default in payment of rents. It was further held that the approach of the primary authority in taking into account the amounts deposited was wrong.

5. Considering the submissions made on either side and on perusal of record, it is amply clear that in the application filed u/s 13 of the said Act, the petitioner-landlord except claiming that since the date of purchase i.e., on 19-7-1979, no rents are paid, there is no averment as to default for a specific period. Admittedly, the petitioner's purchase is followed up by a civil suit, wherein, it was held that the alleged relinquishment by the tenant is hit by Section 14 of the Act. Even as PW1, the petitioner did not state the period of default. The primary authority as well as the appellate authority after a detailed discussion by virtually going into accounting on the various deposits made during the period of receiver and thereafter without addressing themselves to a specific period of default, came to the conclusions. Ultimately, the lower appellate authority, on a consideration of all the payments and taking the date of delivery of possession in favour of the respondents-tenants, found that there is no default, which is purely a finding of fact. In this connection, the provisions in Section 13(a) of the said Act reads as follows:

"13. Termination of Tenancy :--Notwithstanding anything contained in Sections 10, 11 and 12, no landlord shall be entitled to terminate the tenancy and evict his cultivating tenant except by an application made in that behalf to the Special Officer and unless such cultivating tenant--

(a) has failed to pay the rent due by him within a period of one month from the date stipulated in the lease deed, or in the absence of such stipulation, within a period of one month from the date on which the rent is due according to the usage of the locality; and in case the rent is payable in the form of a share in the produce, has failed to deliver the produce at the time of harvest;

6. Under the above provision, a landlord is disentitled to terminate tenancy and seek eviction of a tenant, unless and until there is failure on the part of the tenant to pay rent from the date of due as stipulated. Therefore, necessarily it follows that the period of default has to be for a specific and ascertained period and cannot be for any unspecified period. The reference is to the months, for which the rent is not paid on the due date. A vague and sweeping allegation on the part of the landlord in such application would not satisfy the mandate to make the ground of eviction. Apart from enabling the respondents-tenants to come out and rebut the plea, it cast an obligation on the part of the authority to go into the alleged period and enables to arrive at a definite conclusion after an enquiry on the default before ordering eviction. It is only on the finding as to the existence of default, viz., for an horned period, the tenancy can be terminated and the tenant will be liable for eviction. Otherwise, the bar against eviction, as contemplated under the provision, becomes negative. Such period cannot be permitted to be culled out in the enquiry. Otherwise, it will give scope to a landlord to simply file an application on bald allegations of default and then make a search for the period of default. In this case, the primary authority took upon itself to calculate the various amounts paid and found the default. The appellant authority again by doing similar such exercise of accounting found that there is

no default. Having regard to the conclusion arrived at by the appellate authority, on a fact, and in the absence of specific averment as to the period of default, the very application is not maintainable.

7. In view of the above circumstances, this revision lacks any merits and the same is accordingly dismissed. No costs.