
(1997) 06 AP CK 0007

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3543 of 1994

Lingaiah, Kistaiah, Chennaiah

APPELLANT

Vs

Chillampalli Venkatesham and Another

RESPONDENT

Date of Decision : 26-06-1997

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 — Rule 23(7)
Transfer of Property Act, 1882 — Section 104, 109

Citation : (1997) 5 ALT 416

Hon'ble Judges : R. Bayapu Reddy, J

Bench : Single Bench

Advocate : C.P. Sarathy, for the Appellant; Narayanrao Mandewalker, for the Respondent

Final Decision : Dismissed

Judgement

R. Bayapu Reddy, J.—This revision is filed questioning the orders of the IV Additional Rent Controller, Hyderabad dated 8-9-1994 passed in E.A.No. 12/1994 in E.P. No. 12/1994 in R.C.No. 1572 of 1986.

2. The present revision petitioner is the tenant of the disputed premises relating to which R.C.No. 1572 of 1986 was filed by the landlords for eviction of the tenant. The landlords who filed eviction petition are Chillampalle Venkatesam who is the first respondent herein and C. Krishna who were brothers. The rent control case was allowed ordering the eviction of the present petitioner who was the tenant. Subsequently an appeal was filed in R.A. No. 251 of 1987 on the file Additional Chief Judge, Hyderabad by the tenant and the same was dismissed. Aggrieved of that order, the tenant again filed C.R.P. 3173 of 1991 questioning the orders of the appellate Court and it was also dismissed on 12-4-1993 thereby confirming the orders of the Rent Controller. During the pendency of these rent control proceedings, one of the landlords, by name, C. Venkatesam appears to have gifted away his half share in the premises to his wife, by name, C. Sarojini who is the second respondent herein. The other half of the demised premises

belonged to C. Krishna and he appears to have sold away his half share of the demised premises under an agreement of sale to one Yadagiri when the rent control proceedings were pending before the appellate Court. After the C.R.P. filed in the High Court was disposed of C. Venkatesam, who was one of the landlords of the premises and his wife Sarojini in whose favour he had executed the gift deed relating to his half share filed E.P.No. 12 of 1994 against the present petitioner who is the tenant for delivery of possession of half share in the property which belonged to him and in which the petitioner tenant is continuing as tenant. When the execution petition was pending the present petitioner who is the tenant filed E.A.No. 12 of 1994 contending that C. Krishna who was having half share in the property had executed an agreement of sale in his favour and in view of such agreement of sale he had become owner of the property; that the decree passed in the rent control petition was for the entire premises including half share belonging to C. Krishna, that such decree passed relating to the entire property cannot be executed relating to half share in that property and that therefore the execution petition is not maintainable and it cannot be executed in respect of half share which is sold to him under the agreement of sale. The said petition in E.A.No. 12 of 1994 was filed under Rule 23 (7) of the A.P. Buildings (Lease, Rent and Eviction) Control Rules 1961.

3. The respondents herein, who were also the respondents in E.A. No. 12/94, contested the said petition contending that the property was already partitioned into two shares and C. Krishna who was entitled for half share is said to have sold away his half share to the petitioner while the other half share which belonged to them is also in the possession of the petitioner as tenant, that even though the decree was obtained for eviction relating to the entire demised premises it can be executed regarding the half share for which they were still entitled and which is also in possession of the petitioner as tenant and that therefore the execution petition has to be ordered and E.A.12/94 is not maintainable and liable to be dismissed.

4. After hearing both sides and perusing the material on record the lower Court came to the conclusion that E.A. 12/94 filed by the petitioner is not maintainable under Rule 23 (7) of the A.P. Buildings (Lease, Rent and Eviction) Control Rules, 1961, that such objection raised by the petitioner regarding the executability of the decree for eviction relating to the half of the demised premises is not maintainable and that therefore the petition was liable to be dismissed. He accordingly dismissed E.A.No. 12 of 1994. Questioning such orders of the lower Court the present revision petition is filed by the petitioner.

5. It is contended by the learned Counsel for the respondents, during the course of arguments, in this revision petition that the petition in E.A.No. 12 of 1994 is not maintainable under Rule 23 (7) of the A.P. Buildings (Lease, Rent and Eviction) Control Rules, 1961, that the petitioner herein has also no locus standi to file such a petition, that the decree for eviction obtained against the entire property can be executed against the half share relating to the respondent which

is also in the possession of the petitioner as tenant and that therefore the orders of the lower Court cannot be interfered with.

6. Now it has to be seen whether the petition filed under Rule 23 (7) of the A.P. Buildings (Lease, Rent and Eviction) Control Rules, 1961 is maintainable. It is seen from a perusal of the said provisions of Rule 23 (7) of the A.P. Buildings (Lease, Rent and Eviction) Control Rules, 1961 that it applies only to the claim applications filed by third parties who are not parties to the eviction proceedings. In the present case, the petitioner who filed the E.A. 12/94 is the tenant against whom the eviction proceedings were launched before the Rent Controller and as such he cannot file such objection petition in the execution petition by resorting to the provisions of Rule 23 (7) of the A.P. Buildings (Lease, Rent and Eviction) Control Rules, 1961 as rightly observed by the lower Court. Therefore the petition itself is not maintainable and the lower Court rightly rejected such petition.

7. It is also contended by the respondents herein that the petitioner as described in E.A.No. 12 of 1994 has no locus standi to file such petition as he has got interest in the half portion of the premises even from the material placed on record and that this revision petition is liable to be rejected even on that ground. In order to appreciate this contention which is raised for the first time before this Court it is to be seen that the petition in E.A.No. 12 of 1994 was filed on the ground that the petitioner became the owner of half of the demised premises under an agreement of sale and subsequently under a registered sale deed a copy of which is also filed in this Court on behalf of the petitioner himself. The agreement of sale is said to have been originally executed on 14-8-1993 in the name of one Yadagiri and subsequently registered sale deed is said to have been executed in favour of Bomma Yadagiri Nagalingeswar Rao on 14-8-1994. It is clear from such circumstances that E.A.No. 12 of 1994 was not filed either by the said Yadagiri in whose favour the agreement was executed at the first instance or by Yadagiri Nagalingeswar Rao in whose favour the sale deed was subsequently executed on 14-8-1994. The petitioner in E.A.12 /94 is the firm which was the tenant as described in the rent control case. Inasmuch as the petitioner, which is the firm and which is the tenant as described in the rent control petition, has not become the owner of the half share in the property belonging to C. Krishna under the registered sale deed, a petition to raise objection regarding the maintainability of the execution petition by way of claim petition is not maintainable and the petitioner has no locus standi to file such petition, as it has not become the owner of the half share of the property. In this view of the matter also this petition is liable to be rejected.

8. Regarding the maintainability of the execution petition in respect of the half share of the respondents in which also the petitioner is continuing as tenant, it is to be seen from a perusal of the copy of the sale deed executed by C. Krishna on 14-8-1994 on the basis of which E.A. 12/94 is filed that the disputed building was already partitioned into equal shares and the purchaser under that sale deed

had become entitled to the northern portion of the building while the respondents herein still continue to be as owners of the southern portion of the building. The description of the schedule mentioned in the above said sale deed dated 14-8-1994 also shows that the property sold under that sale deed was described by metes and bounds by giving the boundaries on all the four sides and the southern boundary is shown as the property belonging to the respondents herein. It is only regarding this portion of the building on the southern side to which the respondents are entitled that the execution petition is filed enclosing a plan which is almost similar to the plan enclosed to the registered sale deed dated 14-8-1994. Therefore, when one of the landlords by name C. Krishna had sold away half share belonging to him in the demised premises to some third party and when the remaining half share still belongs to the respondents herein and when the petitioner occupied the entire building which was originally leased out, the respondents naturally filed the execution petition seeking delivery in respect of their divided share only in the building lying on the southern side. Under such circumstances, there is no bar for ordering eviction of the respondents from such southern portion of the building which is also continued to be in the possession of the petitioner even now as tenant.

9. The petitioner further contends that inasmuch as the decree was originally passed relating to the entire building such decree is inexecutable regarding a portion of the building which belonged to one of the landlords and which was subsequently sold to another person. But such contention cannot also be accepted in view of the provisions of Section 109 of Transfer of Property Act. In the decision of the Supreme Court reported in Mohar Singh (Dead) by Lrs. Vs. Devi Charan and Others, , which is also referred to by the lower Court in its orders, it is observed that Section 109 of the Transfer of Property Act provides a statutory exception to the principle of unity and integrity of the tenancy that the said provision enables an assignee of a part of the reversion to exercise all the rights of the landlord in respect of the portion relating to which a reversion is so assigned subject, of course, to the other covenant running with the land. It is further held by the Supreme Court that on partition the co-owner and consequently his transferee became the exclusive owner of one of the shops which came to that co-owner's share and as such there is no question of splitting up the integrity and unity of the tenancy. In such circumstances, on proof of bona fide need, the transferee-landlord is entitled to evict the tenant and in such cases there is no necessity to join another co-owner in the auction. In the earlier decision of this Court reported in Vankayala Suryanarayana and Another Vs. Sri Sitarama Chit Fund Company and Others, it was held that the provisions of Transfer of Property Act in respect of matters exclusively covered by the Rent Control Act are not excluded. It is also held in the said decision that the revision petitioners therein who are transferees decree holders and who have stepped into the shoes of the original decree holder are entitled for recovery of physical possession of the portion of the suit schedule property from the tenants.

Inasmuch as there is no provision in the A.P Rent Control Act or the Rules framed thereunder relating to execution of a decree regarding portion of the demised premises Section 109 of the Transfer of Property Act will apply and such an execution petition filed for eviction relating to only a portion of the demised premises is maintainable and cannot be said to be inexecutable. Therefore, in view of such circumstances, the lower Court rightly dismissed the petition in E.A. No. 12 of 1994 and there are absolutely no valid reasons to interfere with such orders of the lower Court.

10. Therefore, the Civil Revision Petition is dismissed. No costs.