
(1989) 11 AP CK 0020
In the Andhra Pradesh High Court
Case No : C.R.P. No. 998 of 1988

M. Rangaiah Naidu (died) by L.Rs.

APPELLANT

Vs

Abdul Kareem Khan and Others

RESPONDENT

Date of Decision : 03-11-1989

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 20
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1992) 1 ALT 336

Hon'ble Judges : Radha Krishna Rao, J

Bench : Single Bench

Advocate : P.S. Narayana, for the Appellant; T. Laxminarayana, for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Radha Krishna Rao, J.—The landlords who are respondents herein filed a petition before the Rent Controller for eviction of the tenant on the ground of wilful default. The Learned Rent Controller accepted the plea of the landlords and ordered eviction of the tenant and the same was confirmed by the Appellate Authority. The tenant died and his L.Rs. were brought on record at the appellate stage who are revision petitioners herein.

2. Before the appellate authority the tenants brought to the notice of the Court certain events and after considering the plea set up by the tenants, the appellate authority found that the subsequent events as pleaded by the tenants do not alter the position of the tenants and at the same time they do not disentitle the landlords from seeking confirmation of the order of the Rent Controller in regard to the eviction of the tenants from the premises. It is against that concurrent judgment; this revision petition is filed.

3. The premises in question is a non-residential building and it is situated in Park Street, Pakala. The suit premises belongs to one Syed Ahmed Saheb. He

executed a usufructuary mortgage in favour of the respondents herein on 2-10-1952 as per the original of Ex.A-1. The landlords' case is that they let out the premises to one M. Rangaiah Naidu on a monthly rent of Rs. 25/- payable on the first of every succeeding month. The tenant's case is that notwithstanding the execution of the usufructuary mortgage, the mortgagor Syed Ahmed Saheb and members of his family remained in possession of the premises till April, 1965 and on 12-4-1965 it was leased out to late Rangaiah Naidu on a monthly rent of Rs. 24/- and the rent was being paid to one Subhan Khan, a relative of Syed Ahmed Saheb till March, 1972. The contention of the tenants that the said Subhan Khan or his men let out the premises has been rejected. The Rent Controller found that there is relationship of landlord and tenant between the mortgagor and the tenants and the tenants failed to pay the rent from June, 1973 to June, 1979. In support of the case of wilful default, the landlords relied upon Ex.A-5, the judgment in O.S. No. 527 of 1976 wherein the Court granted a decree for arrears of rent. In that judgment also the Court found that there is relationship of landlord and tenant between the parties and E.P.126/79 was filed by the landlords for realisation of the rent upto 30-5-1979 which clearly shows that what has been stated by the landlords is found to be correct. It is against that finding appeal has been filed and in view of the decree that has been granted by a competent Civil Court, the lower appellate Court was perfectly justified in confirming the finding of the Rent Controller on the ground of wilful default.

4. In this revision petition, the learned counsel for the petitioners contended that the subsequent events have to be taken into consideration in the Rent Control cases. The subsequent events set out by the tenants are that the heirs of the mortgagor instituted a suit for redemption in 578 of 1982 against the landlords and also against late Rangaiah Naidu and the said suit was decreed after contest on 12-9-1986. The decree of the Court in the said suit was marked during the appellate stage. The tenants who are defendants 5 to 7 in O.S.No. 578 of 1982 filed an appeal A.S. No. 20 of 1987 on the file of the Additional District Judge, Tirupathi. They also filed an application for stay of the decree and judgment in the suit and stay was granted on condition of the tenants depositing the rent which they have been paying to the other persons. Neither the mortgagor nor the mortgagee filed an appeal. It is only the tenants that filed the appeal and obtained stay of operation of the decree and judgment.

5. In this revision petition welfare only concerned to decide whether subsequent events can be taken into consideration in an application for eviction of the tenants for wilful default.

6. Krishna Iyer, J., in Pasupuleti Venkateswarlu Vs. The Motor and General Traders, speaking on behalf of the Bench held:

"We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must take cautious cognisance of

events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

7. In *Kommerla Mallaiah v. Yarlagadda Mahalakshamma* 1980 (2) ALT 134 subsequent to the filing of the eviction petition partition took place and the suit premises in that case fell to the share of one of the vested remainder holder. The learned Judge held that the life estate holder has no locus standi whatsoever as she is having no more interest in the schedule premises; the vested remainder being the owner of the said premises and she has no right whatsoever to get the tenant evicted from the suit premises.

8. The Supreme Court in *Ram Das v. Ishwar Chander* 1988 S.C. 1422 reiterated and reaffirmed its earlier opinion that the Court can take cognizance of subsequent events and mould the relief. *Rama Rao, J.*, in a case reported in *Gopalkrishna v. G. Satyanarayana* 1984 (1) ALT 56 observed that subsequent cessation of the right to continue the eviction petition and the events which scotch the basis for eviction can be taken into consideration.

9. It is a well settled principle that in Rent Control cases where a particular requirement is made by the landlord for eviction of the tenant and where subsequent events either during the pendency of the appeal or revision petition reveal that the requisite condition as pleaded by the landlord and as accepted by the Rent Controller has lost its significance, the Court can take cognizance of the subsequent events and mould the relief. In moulding the relief to be granted in an appeal or revision arising under the Rent Control Act, the Court of appeal or revision is entitled to take into account even the facts and events which have come into existence after an order was passed by the Rent Controller.

10. In this case the subsequent event i.e., granting of a decree in favour of the mortgagor has to be taken into consideration. Then what is the effect of the decree that has been passed in favour of the mortgagor. *Sri P.S. Narayana*, the learned counsel for the revision petitioners contended that when a decree for redemption is granted, the mortgagee has no right to continue the proceedings and the position of the tenants is that of a trespasser. The facts in this case show that the mortgagees took vacant possession of the premises when they obtained the usufructuary mortgage. The relief in the suit for redemption and its acceptance by the Court was that the mortgagees were directed to put the mortgagors in vacant possession of the mortgaged property. Therefore under law and as per the decree of the Court, the mortgagees who are the landlords herein were bound to give vacant possession of the property to the mortgagors-decree holders and receive Rs. 5,000/- deposited in the Court. The landlords are entitled to seek all such reliefs claimed by them in their capacity as landlords" as defined under the Act. They cannot run away from their legal duty and obligation to deliver possession of the property as per the terms of the decree and render themselves liable for any possible future action for disobedience of such decree. Granting of a decree for redemption does not an end to and discharge the mortgagees of their liability to restore vacant possession of the property.

11. The Madras High Court as early as in 1921 dealing with a case u/s 74 of the Alagiriswami Mudali and Others Vs. Akkulu Naidu, observed:

"When a mortgage is redeemed, subsidiary rights created on the mortgaged property such as lease rights come to an end ipso facto and any former tenant continuing on the land must be treated as a trespasser thereafter unless of course from the conduct of parties or otherwise a fresh tenancy can be held to have been created or an implied tenancy arises."

It is a case where the mortgagee creating lease on mortgaged property. On redemption whether by 2nd mortgagee or mortgagor, lease is terminated. It was also held that Section 74 of the Transfer of Property Act gives the redeeming 2nd mortgagee only the rights and powers of the redeemed mortgagee as such and it does not pass any rights of his as landlord under the lease. So the tenancy that has been created by the mortgagee will not enure to the benefit of the tenants though they are still tenants.

12. A Full Bench of the Madras High Court in S.V. Venkatarama Reddiar Vs. Abdul Ghani Rowther and Others, held that the rule of exception contained in Section 76(a) of the T.P. Act cannot be readily and automatically invoked by a tenant let into possession of urban property by a mortgagee with possession. It was held that the tenant from usufructuary mortgagee of building is not entitled to protection of Tamil Nadu Buildings (Lease and Rent Control) Act on redemption of mortgage.

13. The Supreme Court in Sachmal Parasram Vs. Ratnabai and Others, while considering a case of lease created by mortgagee in possession on redemption of mortgage and the effect of redemption under Sections 76(a) and 111(c) of the Transfer of Property Act observed:

"The principle of Section 76(a) that acts done bona fide and prudently in the ordinary course of management may bind even after the termination of the title of the mortgagee in possession applies ordinarily to the management of agricultural lands and has seldom been extended to urban property."

14. Coming to the facts of this case, the decree obtained by the mortgagor has not become final, but the right to deliver possession on account of the decree that has been granted by the competent Civil Court casts on the mortgagee. As there is wilful default in payment of rent and as there is a finding by the competent Court about the wilful default and as the landlord is entitled to take back possession on that premises and in view of the subsequent event i.e., granting of decree for redemption and the landlord is obliged to give vacant possession, he can take advantage of the same and implement the same. Merely because a decree for redemption was granted as a matter of rule it cannot be said that the tenants have become trespassers particularly when the tenants have come on record in the suit for redemption claiming that they are only tenants. In that event, they have to take the consequences of default that was committed by them which resulted in the passing of the eviction order. The

reasoning given by the lower appellate Court that the landlords have a subsisting right to oppose the appeal inasmuch as the tenant was guilty of wilful default by the date of the petition which could not be cured even if they had been paying rents subsequently since the wilful default in this case was such that the arrears had ripened into a decree, the execution for which was also received, is correct.

15. The revision petition is accordingly dismissed. No costs. Time for eviction is granted till 31-12-1989. The tenants are directed to put the landlord in possession of the vacant premises on or before 31-12-1989.