
(2002) 06 AP CK 0004
In the Andhra Pradesh High Court
Case No : C.R.P. No. 421 of 2002

Manda Kameswar Rao and Others

APPELLANT

Vs

Pulle Venkateswarlu and Others

RESPONDENT

Date of Decision : 26-06-2002

Acts Referred:

Citation : (2002) 5 ALD 702 : (2002) 6 ALT 523

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : E.V. Bhagiratha Rao, for the Appellant;

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Respondent filed R.C.C.No.30 of 1991 before the Rent Controller-cum-Principal District Munsif, Vizianagaram, seeking eviction of Manda Kameswar Rao, the tenant, and the father of the revision petitioners, from the building specified in the schedule appended to the petition, [hereinafter called the "building"] on the ground of wilful default in payment of rent from April to September, 1991 bona fide requirement of the building for his personal occupation. The tenant Kameswar Rao filed his counter denying his committing default much less wilful default in payment of rent from April to September, 1991 and contending that he was paying rent in lumpsum as and when required by the respondent and was obtaining receipts and that the requirement of the building by the respondent who has a specious house at Visakhapatnam is not bona fide. In support of his case, respondent examined his wife as P.W.1 and marked Exs. A1 to A11. In support of his case, the tenant Kameswar Rao examined himself as RW.1 and marked Exs.B1 to B3. The learned Rent Controller held that the tenant Kameswar Rao committed default in payment of rent from April to September, 1991 but it was not wilful default and that the requirement of the building by the respondent is bona fide and ordered eviction of the tenant Kameswar Rao from the building on the ground of his bona fide requirement for personal occupation. Aggrieved by the order of eviction passed against him, the tenant Kameswar Rao

filed R.C.A.No.9 of 1996 before the appellate authority-cum-Senior Civil Judge, Vizianagaram. During the pendency of the appeal, the tenant Kameswar Rao died and consequently revision petitioners and their mother Kameswari were brought on record as legal representatives of Kameswar Rao. During the pendency of the appeal, mother of revision petitioners Kameswari died. Revision petitioners continued the appeal proceedings as the legal representatives of Kameswari as well as the tenant Kameswar Rao. The learned appellate authority reversed the finding of the Rent Controller. On the ground of wilful default, and confirming the finding of the Rent Controller that the requirement of the building by the respondent is bona fide ordered eviction of the revision petitioners from the building on both the grounds on which he sought the eviction of the tenant. Hence, this revision.

2. Though served, respondent did not choose to appear either in person or through counsel.

3. The main contention of the learned counsel Sri E.Bhagiratha Rao, for the revision petitioners is that the appellate authority was in error in upsetting the finding of the Rent Controller on the question of wilful default without the respondent even preferring cross-objections or a separate appeal questioning the said finding. He further contended that respondent did not go into the witness box and did not give an opportunity to the tenant to cross-examine him on the aspect of his bona fide requirement of the building for his personal occupation. It is his contention that an adverse inference ought to be drawn against the respondent for his abstinence from the witness box.

4. I am not able to agree with the contention of the learned counsel for the revision petitioners that the appellate authority should not have upset the finding of the Rent Controller on the question of wilful default without the respondent preferring cross-objections or separate appeal against the adverse finding, because the appellate authority can exercise all the powers of the original authority and pass any order irrespective of the fact that respondent did not file cross-objections questioning the adverse findings against him. In fact in BALLANIC RANGANAYAKULU AND OTHERS vs. MATTUPALLI NAGESWARA RAO¹, a learned single Judge of this Court held that in appeal filed by a tenant against an order of eviction passed against him, the landlord can support the order even on the ground found against him even without preferring cross-objections. Since an appeal is but a rehearing of the case by a superior authority, even without preferring cross-objections on the adverse finding against him, a respondent in an appeal can challenge the validity of the adverse findings against him, and the appellate authority has ample power to upset those findings of the lower authority, if the evidence on record so warrants.

5. On the ground that Exs.A1 and A3 money order coupons and Ex.A5 to A7 money order receipts show that the tenant Kameswar Rao was paying rents once in two months, the Rent Controller held that the practice of the respondent is to receive rent for the building once in two months and in view of Ex.A.9 it has to

be taken that the electrification of the building by the tenant, Kameswar Rao was done with the consent of the respondent with the rent payable from April to September, 1991 and so the tenant Kameswar Rao cannot be said to be a wilful defaulter. The appellate authority, basing on the evidence of P.W.1 that permission was not given to the tenant, Kameswar Rao to electrify the building, is corroborated by Exs.A10 to B1, and keeping in view the ratio in M.V.S.PRASADA RAO vs. MANGAMMA² held that non-payment of rent from April to September, 1991 by the tenant Kameswar Rao amounts to wilful default.

6. Even assuming that the respondent was in the habit of receiving rents for two months at one time, non-payment of rent for a period of six months from April to September, 1991 cannot be said to be in accordance with the said practice. A tenant who takes a premises, which does not have the facility of electricity and electrical fittings on lease, can get it electrified with the rent payable only with the consent of the landlord, and cannot unilaterally take a decision to have the facility of electricity and make use of the amount payable as rent to the landlord for that purpose. If a tenant feels that the premises taken on lease by him is not in accordance with his taste or requirement, he can surrender the lease and take another premises suitable to his taste on lease. But he cannot unilaterally take a decision to add amenities to the building from out of the rent payable and contend that since he spent the rent for providing amenities to the premises taken on lease by him, he is not a wilful defaulter in payment of rent to the landlord. The Rent Control Act, which contains a provision in Section 14 enabling a tenant seeking restoration of the amenities, which are withheld by the landlord, does not empower the tenant creating afresh amenity unilaterally, from the rent payable by him to the landlord. So a tenant who creates a facility to the premises without the consent of the landlord and fails to pay the rent to the landlord till the amount spent by him for creating the amenity is recouped cannot but be said to be a wilful defaulter in payment of rent to the landlord.

7. If a landlord fails to affect repairs to the demised premises, as per Section 19 of the Rent Control Act the tenant, after following the procedure prescribed therein can get repairs affected to the demised premises and can adjust only one month's rent in an year towards the amount spent by him for repair, and cannot deduct more than one month's rent to meet the expenses for repair. Even assuming that the provisions contained in Section 19 of the Rent Control Act can be applied to cases where a tenant creates a fresh amenity himself, the tenant Kameswar Rao deducting rents from April to September, 1991 towards expenses incurred by him for electrification of the building cannot but be said to be an act of wilful default. Therefore, I find no ground to interfere with the finding of the learned appellate authority that Kameswar Rao committed wilful default in payment of rent from April to September, 1991.

8. The second ground is, bona fide requirement of the building for his personal occupation by the respondent. The case of the respondent is that he, his wife, two unmarried daughters, one married son with his wife and children and an

unmarried son are residing in a small house at Daba Gardens, at Visakhapatnam, and since his wife and unmarried daughters are not able to pull on with his daughter-in-law, he wants to set up a separate residence in the building at Vizianagaram own house. The evidence of P.W.1, the wife of respondent, is that the house at Daba Gardens at Visakhapatnam, has three rooms and that she, her husband (respondent), three sons, two daughters, daughter-in-law and five grand children are living in that house and so she and her husband and unmarried daughters want to reside in the building at Vizianagaram. During cross-examination she denied the suggestion that her married son is residing at Railway Quarters and that her second son is staying separately and her third son working at Bilaspur.

9. The fact that the respondent has three sons and two daughters and that one son is married and has children is admitted by the tenant, Kameswar Rao. Since, it is not the case of the tenant, Kameswar Rao that the respondent has any other house, except the building at Vizianagaram, the need of the respondent, who presently is residing at Visakhapatnam and wants to set up a residence at Vizianagaram, *prima facie*, has to be taken as bona fide because usually nobody would shift his family from one town to another town with an oblique motive to evict his tenant. Therefore, the contention of the tenant, Kameswar Rao and the revision petitioners that the eviction petition is filed with an oblique motive to let out the building to third parties at a higher rent, after securing an order of eviction against them, cannot be accepted because as per Section 10(5)(a) of the Rent Control Act if the landlord, who obtains possession of the building in pursuance of an order of eviction passed under sub-section (3) of Section 10, does not himself occupy it for the purpose specified in the order within one month from the date of obtaining possession, or having so occupied it, vacates it without reasonable cause within six months of such date, the tenant who has been evicted can apply to the Rent Controller for an order directing the landlord to restore possession of the premises to him. So, if the respondent fails to occupy the building within one month from the date of his obtaining possession from the revision petitioners or if he vacates the building within six months after occupying the same and lets it out to others, the revision petitioners would be at liberty to invoke the provisions of Section 10(5)(a) of the Rent Control Act and seek restoration of possession of the building. Therefore, respondent not going into the witness box to speak about his requirement of the building being bona fide is not fatal to his case. It is well known that a party can establish his case not only by his evidence but by other modes also. There is nothing, which is within personal knowledge of the respondent. It is the case of the respondent that his wife and daughter-in-law are not pulling on well, and so he wants to set up a separate residence at Vizianagaram, away from his son and daughter-in-law. Respondent examined his wife as P.W.1. The tenant Kameswar Rao should have elicited from PW1 as to what the differences between her, (PW1) and her daughter-in-law, are, and the reasons that prompted her to live separately from her daughter-in-law. When the wife of respondent went into witness box to

swear to the above fact, it is not necessary for the respondent to go into the witness box and say that his wife and daughter-in-law are not pulling on well and so he wants to set up a separate residence in another house with his wife. So, his non examination does not entitle an adverse inference being drawn against him.

10. The Supreme Court in VALLAMPATI KALAVATHI vs. HAJI ISMAIL³ held that High Court should not upset the concurrent findings of fact recorded by the Fora below merely because it is inclined to take a different view. In N.PRABHAKAR RAO vs. J.R.RAMESH KUMAR⁴, the Supreme Court held that unless the order assailed suffers from illegality, irregularity or impropriety, High Court should not interfere with concurrent findings of facts. In this case both the Courts concurrently found that the requirement of the building by the respondent is bona fide. For the said reasons and for the reasons mentioned above, I do not find any illegality or irregularity in the concurrent finding by the two Fora below that the requirement of the respondent is bona fide. Therefore, I find no merits in this revision.

11. In the result, the revision petition is dismissed. However, revision petitioners are granted time till the end of December, 2002 for vacating the building subject of course to the condition that they should pay the rents due and payable by them in respect of the building regularly in advance on or before 10th of every month. In the event of their failure to deposit the rent on or before of 10th of any month before December, 2002, the respondent is at liberty to execute this order. Parties are directed to bear their own costs.