

(2012) 03 AP CK 0063

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 432 and 635 of 2009

M/s. Kiron's and Another

APPELLANT

Vs

Mangalagiri Mohammed Ibrahim @ Babu Miya (Died) Per L.
Rs. Zulekha Bee and Others

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 4

Citation : (2012) 4 ALT 481

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : P. Venugopal, for the Appellant; B. Adinarayana Rao, for the Respondent

Judgement

C.V. Nagarjuna Reddy

1. Since the parties and the property which is subject matter of the dispute are common, both these Civil Revision Petitions are heard and being disposed of together. C.R.P.No. 432/2009 arises out of Judgment dated 14-11-2008 in R.A.No. 309/2006 on the file of the Court of the learned Chief Judge, City Small Causes Court, Hyderabad whereby she has confirmed the Judgment dated 9-10-2006 in R.C.No. 29/2005 on the file of the learned Additional Rent Controller-cum-XVIII Junior Civil Judge, Secunderabad.

2. C.R.P.No. 635/2009 is filed against the Judgment in R.A.No. 276/2007 of the learned Chief Judge, City Small Causes Court, Hyderabad whereby she has confirmed the Judgment dated 7-11-2007 in R.C.No. 37/2005 on the file of the learned Principal Rent Controller, Secunderabad.

3. The petitioners are the tenants of premises bearing No. 3-3-10, Rashtrapathi Road, Secunderabad, comprising ground floor mulgi and first floor hall (for short "the demised premises"). The original sole respondent was the landlord of the demised premises. During the pendency of the Civil Revision Petitions, the

landlord died and respondent Nos.2 to 7 are brought on record in his place as his legal representatives.

4. For convenience, the parties are referred as the "landlord" and the "tenants".

5. The demised premises which is situated in a busy commercial area in Secunderabad was let out to the tenants. When the tenants were inducted in possession, the demised premises was a joint family property. In pursuance of a partition decree dated 7-9-2004 in C.C.C.A.No. 92/2001 & C.M.P.No. 11679/2001 passed by this Court, the demised premises fell to the share of the landlord. At that time, the tenants were paying Rs. 400/-per month as lease for the demised premises. Consequent on passing of the above mentioned partition decree, the landlord issued Ex.P-1 notice wherein he has demanded the tenants to increase the rent to Rs. 44,375/-per month. Thereafter, the landlord has filed R.C.No. 29/2005 in the Court of the learned Additional Rent Controller, Secunderabad for eviction of the tenants and R.C.No. 37/2005 in the Court of the learned Principal Rent Controller, Secunderabad, for fixation of fair rent u/s 4 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960.

6. By order dated 9-10-2006, the learned Additional Rent Controller allowed the eviction petition on the ground of bonafide requirement while rejecting the plea of the landlord that the tenants have secured alternative accommodation. R.C.No. 37/2005 was disposed of by order dated 7-11-2007 whereby the learned Principal Rent Controller fixed Rs. 6000/-for the ground floor Rs. 4000/-for the first floor, totalling Rs. 10,000/- per month as fair rent for the demised premises.

7. Feeling aggrieved by the order dated 9-10-2006 in R.C.No. 29/2005, the tenants filed R.A.No. 309/2006. The tenants have also filed R.A.No. 276/2007 against the order in R.C.No. 37/2005 fixing the fair rent while the landlord has filed R.A.No. 280/2007 not feeling satisfied with the quantum of the fair rent. The learned Chief Judge, City Small Causes Court, Hyderabad dismissed R.A.No. 309/2006 by Judgment dated 14-11-2008 confirming the order of eviction. On the same day, the learned Chief Judge has dismissed both the rent appeals viz., R.A.Nos.276/2007 and 280/2007, whereby she has confirmed the fair rent fixed by the learned Principal Rent Controller. The tenants filed C.R.P.No. 432/2009 against the Judgment in R.A.No. 309/2006 and C.R.P.No. 635/2009 against the Common Judgment in R.A.Nos.276 and 280 of 2007.

8. I have heard Sri P. Venugopal, learned counsel for the tenants and Sri B. Adinarayana Rao, learned counsel for the landlord.

9. Let me first consider C.R.P.No. 432/2009 pertaining to eviction of the tenants. The eviction petition was filed on two grounds, namely, that the tenants have secured alternative accommodation for their business and that the son of the landlord who is unemployed, having discontinued B.Com., bonafide requires the demised premises for starting business in leather garments and traveling goods. At this juncture it is relevant to note that the learned Additional Rent Controller has rejected the plea of the landlord that the tenants have secured alternative

accommodation. However, the lower appellate Court has reversed the said finding. When the learned counsel for the tenants has seriously disputed the jurisdiction of the Court to render such a finding in the absence of filing of an appeal by the landlord, Sri B. Adinarayana Rao, learned counsel for the landlord, has submitted that he is conceding on the said aspect and the case may be considered on the issue of bonafide requirement alone.

10. The main plank on which the tenants have contested the plea of bonafide requirement of the landlord is that Ex.P-1 notice, immediately following which the eviction petition was filed, is completely silent about the bonafide requirement and that the eviction petition was merely a cloak for extracting higher rent. A perusal of Ex.P-1 notice would undoubtedly show that there is no reference to the proposed business of the landlord's son and that the whole emphasis was on enhancement of rent. However, in the Rent Control application, it is specifically averred that the landlord's eldest son Mohammed Hussain, aged about 36 years, discontinued his B.Com. final year and remained unemployed and that the landlord was proposing to commence business for his son in leather garments and travelling goods in the ground floor portion of the demised premises and that the first floor portion is required for storing the goods. It is also averred that the premises owned by the landlord at Bakaram which is in a labour colony, is small in size and occupied by tenants and that the landlord is not in possession of any other non-residential premises in the twin cities suitable for the proposed business.

11. In the counter-affidavit filed by respondent No. 2 it is stated that to the best of his knowledge, neither the landlord nor his eldest son have ever carried on business in leather garments or traveling goods and that in the absence of any experience in that regard, it is not possible for starting such a business. It is also pleaded that on the landlord's own showing they own a commercial premises at Bakaram and that therefore there is no bonafide requirement.

12. The landlord has examined himself as PW-1 and his son was examined as PW-2. In his chief-examination, the landlord has reiterated his case of bonafide requirement. In his cross-examination, the landlord has admitted that in Ex.P-1 notice he did not mention about the bonafide requirement but subsequently after discussions among the family members, they have decided to start the business. PW-2 reiterated his father's version on commencement of business. In his chief-examination, PW-2 stated that he has dire necessity for the demised premises as he wants to carry on business in leather garments and travelling goods. No suggestions were put to PW-2 in his cross-examination denying the existence of bonafide requirement.

13. Even though Ex.P-1 notice is silent on the aspect of bonafide requirement, the landlord has raised a consistent plea that the demised premises is required for commencement of business in leather garments and travelling goods by his son who is unemployed as evident from the eviction petition and the evidence adduced by him. It is noteworthy that the tenants have failed to put suggestions

to PW-1 and PW-2 in their cross-examination suggesting that the latter's plea of bonafide requirement is false. If the landlord has come out with a false plea in that regard, the tenants are expected to subject him and his son to severe cross-examination on this aspect. Interestingly, not even a formal suggestion was made to PW-2 in his cross-examination that his plea that he wanted to start business is false.

14. As rightly concluded by both the Courts below, by the mere failure of the landlord to mention about the bonafide requirement in Ex.P-1 notice, his plea of bonafide requirement cannot be disbelieved. In K.S. Sundararaju Chettiar Vs. M.R. Ramachandra Naidu, the Supreme Court, while repelling an identical contention held that non-mentioning of the ground of bonafide requirement in the notice for eviction usually raises a suspicion about the existence of such ground but such non-mentioning by itself cannot disentitle a landlord to claim eviction on such ground. For better appreciation, it is useful to reproduce the relevant portion of the said Judgment hereunder:

After giving our careful consideration to the facts and circumstances of the case, it appears to us that non-mention of a reasonable ground for eviction in the notice for eviction on the basis of which a claim for eviction is later on founded usually raises a suspicion about the existence of such ground but such non-mention by itself cannot disentitle a landlord to claim eviction on such ground. If a claim for eviction founded on such ground in the petition for eviction is proved to be well-founded and the same is consistent with the grounds on which eviction is permissible in law, the landlord will be entitled to a decree for eviction notwithstanding the fact that such ground was not mentioned in the notice for eviction. In our view, the appellate authority has rightly indicated in the facts of this case, that the partnership business under the name and style of Govindammal and Company was in existence even prior to giving notice for eviction by the landlord. Such partnership business was registered and the licence for the business was obtained and the business had been subjected to assessments made by the income tax authorities. Hence, such business was not brought into existence only for the purpose of making a foundation for eviction of the tenant with mala fide intention. Hence, in the facts and circumstances of the case, it cannot be reasonably held that the claim of bonafide requirement on account of the said partnership business is per se mala fide and should not be taken into consideration simply because the case for bonafide requirement on that account had not been mentioned in the notice for eviction (emphasis added)

15. The subsequent pleadings, the evidence and the conduct of the parties are all relevant to form an opinion on this aspect. The very fact that there is no serious cross-examination of the landlord and his son by the tenants on the landlord's plea of bonafide requirement would tilt the scales in his favour. Even on the uncontroverted facts, PW-2, who discontinued his graduation is obviously idle without doing any business. It has also come on record that earlier the landlord was doing business in hydes and PW-2 was assisting him till the year 1996 when

the business was closed due to the former's ill-health. As the premises has fallen to the share of the landlord in pursuance of a compromise entered among the joint family members leading to passing of the above mentioned compromise decree by this Court, the landlord obviously decided to commence business through his son. Therefore, the plea of the landlord that the demised premises is required bonafide for commencement of business by his son cannot be viewed as incorrect or false. When a commercial premises is owned by a person and one of his family members is keeping idle, it is natural for such a person to utilize the premises for commencement of his own business, more so when business is the main occupation of the family. Viewed from this angle, both the Courts are justified in accepting the plea of bonafide requirement raised by the landlord. Therefore, I do not find any reason to take a different view on this aspect.

16. With regard to fixation of fair rent, which is subject matter of C.R.P.No. 635/2009, a perusal of the record shows that the demised premises is described as admeasuring 70.43 sq. yards equivalent to 1267.74 sq. ft., comprising 633.87 sq. ft. of ground floor and 633.87 sq. ft. of first floor hall. The landlord has filed Ex.P-11 market value certificate and Exs.P-7 to P-10 certified copies of lease deeds in respect of premises bearing municipal No. 3-3-6 and its first and second floor premises. The tenants have filed Exs.R-5 and R-6 rent receipts to show that the rents of premises similar to the demised premises are not in excess of Rs. 1000/-. The learned Principal Rent Controller has refused to rely upon the documentary evidence adduced by both the parties on the ground that the persons connected with those documents were not examined. The learned Principal Rent Controller also refused to rely upon Exs.P-7 and P-10 on the ground that the building connected with the said documents was a much later construction and let out to Canara Bank while the demised premises was constructed in the year 1937 and that there is no evidence to show that the same is being maintained periodically. The learned Principal Rent Controller has taken into consideration that the rent at the time of disposal of the case was Rs. 4000/- per month and the annual turnover of the tenants as evident from Exs.R-13 to R-22 was Rs. 6,00,000/- per annum, in fixing Rs. 6000/and Rs. 4000/-, per month, for the ground and first floors, respectively, as fair rent.

17. The lower appellate court has reappreciated the evidence on record. Even though the parties connected with Exs.P-7 to P-10 were not examined, the lower appellate Court has considered those documents as they (Exs.P-7 to P-9) were certified copies relating to a transaction with a Nationalized Bank, the authenticity of which was not disputed. It has also considered Ex.P-10 relating to premises comprising 550 sq. ft. area for which a rent of Rs. 9000/-was being paid, which works out to Rs. 16/-per sq. foot. After weighing the documentary evidence adduced by both the sides, the lower appellate court has arrived at the conclusion that as on the date of filing of the petition, the prevailing rent of the demised premises was about Rs. 16/-per sq. foot. On finding that at the said rate the total rental value will come to Rs. 9600/-and that the learned Principal Rent Controller has fixed Rs. 10,000/-, the lower appellate court has confirmed the

same. On a careful consideration of the reasons assigned by the lower appellate Court, I am thoroughly satisfied that the same do not warrant any interference of this Court in exercise of its revisional jurisdiction. Nothing is brought to the notice of this Court by the learned counsel for the tenants indicating that any of the findings rendered while fixing the fair rent suffer from irrationality. Therefore, the market rate of rent fixed by the Courts below also does not call for any interference.

18. There is however one aspect remaining to be dealt with. The tenants have filed C.R.P.M.P.No. 7358/2011 for receiving copy of lease deed dated 4-10-1966 entered between the Estate Officer and Hussain Bee and others in order to show that the Estate Officer has entered into lease only for 1255 sq. ft. or 139.44 sq. yards and that the remaining land to the extent of 1547.60 sq. ft, equivalent to 171.96 sq. yards, was not leased out. The tenants wanted to further prove that out of the said extent of 1255 sq. ft., only an extent of 94.11 sq. yards was converted into freehold land in favour of Mohd. Ismail, 22.44 sq. yards in favour of Abdul Rahim and the balance 22.89 sq. yards concerning Mohd. Ibrahim is yet to be converted from leasehold to freehold land. The tenants also filed C.R.P.M.P.No. 5082/2011 for receiving further additional documents. The endeavour of the tenants in filing these applications is only to plead that the total extent of the leased premises is only 22.89 sq. yards and that therefore the total rent should proportionately be reduced taking the actual leased area into account. The learned counsel for the landlord has drawn the attention of this Court to the plan attached to the conveyance deed dated 3-11-2006 and submitted that from out of the entire premises bearing Nos.3-3-54 and 3-3-55, comprising 847 sq. ft. or 78.68 sq. mts., only a part thereof was leasehold land which was converted into freehold and that this does not mean that the rest of the area forming part of 847 sq. ft. does not belong to the landlord or that the same is not in occupation of the tenants.

19. I find force in the submission of the learned counsel. The above mentioned document shows that a part of 94.11 sq. yards, equivalent to 78.68 sq. mts. or 847 sq. ft. alone was converted from leasehold into freehold. At no point of time, the tenants have seriously disputed the landlord's ownership over the balance area. On the contrary, in paragraph-3 of the counter-affidavit of respondent No. 2 filed in R.C.No. 29/2005, there is an admission to the effect that the premises admeasures 600 sq. ft., which obviously is referable to one of the two floors of the demised premises. In his chief-examination, respondent No. 2 has admitted that the petitioner is the owner and landlord of the double storied premises bearing No. 3-3-10 with a mulgi in the ground floor. In Ex.P-1 legal notice, the extents of areas in occupation of the tenants were claimed to be 70.43 sq. yards in the ground floor and the first floor respectively, equivalent to 1267.74 sq. ft. In the reply notice Ex.P-2, this claim was not disputed by the tenants. There was an admission therein that in the year 1937 itself, the father of the landlord has inducted the grandfather of respondent No. 2 in possession. As the tenants never disputed the total extent of the demised premises, they cannot be permitted to

raise this plea for the first time before this Court. At any rate, the submission of the learned counsel for the landlord that from the conveyance deed dated 3-11-2006, it cannot be concluded that the landlord is entitled to receive rent only to the extent of the land which was converted into freehold right merits acceptance. It is quite probable that the balance land must have been owned by the landlord's family and therefore there was no need for any such conversion. It is not the pleaded case of the tenants that they are in occupation of the premises only to the extent covered by the conveyance deed. When they have not disputed the total extent in their occupation of the demised premises and in the absence of any competing claim either by the local authority or by any other individual over the balance part of the premises, it is reasonable to presume that the landlord is the lawful owner of the entire demised premises and the tenants cannot be permitted to raise a dispute regarding the extent of property for which the landlord is entitled to receive the fair rent.

20. On the analysis as above, both the Civil Revision Petitions are dismissed.

21. Sri P. Venugopal, learned counsel for the tenants, submitted that since his clients are in occupation of the demised premises from the time of their grandfather from 1937, they may be given reasonable time for vacating the demised premises.

22. Having considered their longstanding possession and the further fact that they need reasonable time for securing an alternative premises, the tenants are given six months' time for vacating the demised premises, subject to the following terms:

(i) Within three weeks from today, the tenants shall file an affidavit before the learned Additional Rent Controller-XVIII Junior Civil Judge, Secunderabad undertaking to vacate the demised premises on the expiry of six months from today;

(ii) within four weeks from today, the tenants shall deposit arrears of fair rent as fixed in R.C.No. 37/2005; and

(iii) the tenants shall also continue to pay the future rents as fixed in R.C.No. 37/2005 till vacation of the demised premises;

23. In default of any of the above conditions, the landlord is entitled to execute the eviction orders. As a sequel, interim order dated 16-7-2009 is vacated and C.R.P.M.P.No. 640/2009 in C.R.P.No. 432/2009 and C.R.P.M.P.Nos.928/2009, 246 and 247/2010 in C.R.P.No. 635/2009 are disposed of as infructuous.