
(2005) 07 AP CK 0056
In the Andhra Pradesh High Court
Case No : SA No. 908 of 2001

Nandam Mohanamma and Others

APPELLANT

Vs

Markonda Narasimha Rao and Another

RESPONDENT

Date of Decision : 27-07-2005

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 2
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4
Evidence Act, 1872 — Section 91, 92
Transfer of Property Act, 1882 — Section 106

Citation : AIR 2006 AP 8 : (2005) 5 ALD 296

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C. Ramachandra Raju, for the Appellant; D.V. Sitharam Murthy, for the Respondent

Judgement

L. Narasimha Reddy, J.—Defendants in O.S. No. 205 of 1989, on the file of the Court of Principal District Munsif, Rajahmundry, are the appellants.

2. The respondents filed the suit for the relief of recovery of possession of suit schedule property, on the basis of termination of the lease, and for damages for use and occupation of the suit schedule property, upto the date of the suit. It was pleaded. that the open land of 149 sq.yards, situated in Ward No. 10, and described in the suit schedule, was leased to Sri Hemasundara Rao, the husband of the first appellant and father of appellants 2 and 3, initially, in the year 1968, for a period of ten years, and thereafter, in the year 1978 for another spell of ten years. It was alleged that the appellants did not vacate the premises, even after the expiry of the lease, and as such, a notice dated 5.3.1988, was issued u/s 106 of the Transfer of Property Act, terminating the lease. They pleaded that they are entitled for the relief of recovery of possession of the land, as well as damages for use and occupation of the same.

3. Appellants resisted the suit. They did not dispute the ownership of the

respondents. It was, however, pleaded that the subject-matter of the lease was a shed, existing as on the date of commencement of the lease, and the rent was less than Rs. 1,000/-, and in that view of the matter, the suit is not maintainable. It was alleged that during the life time of Hemasundara Rao, the property was agreed to be sold, for a consideration of Rs. 60,000/-, and a sum of Rs. 5,000/- was paid, as advance.

4. The trial Court found that the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act") do not apply to the premises in question, and that the quit notice, marked as Ex.A-3, is in accordance with law. Consequently, it decreed the suit and ordered eviction of the appellants. The mesne profits were awarded at the rate of Rs. 350/- per month. Aggrieved by the decree, the appellants filed A.S. No. 107 of 1996, in the Court of Second Additional District Judge, East Godavari at Rajahmundry. The appeal was dismissed on 13.8.2001. Hence, this second appeal.

5. Sri C. Ramachandra Raju, learned Counsel for the appellants, submits that there is clinching evidence on record, to disclose that by the time the lease was granted initially in the year 1968, or at least by the time it was granted for the second spell of ten years in the year 1978, there existed a structure over the said land, and in that view of the matter, the suit ought to have been dismissed, as not maintainable. He contends that the property was referred to as vacant land in the lease deeds, only with a view to avoid protection under the Act, to the appellants and their predecessor, and that the same cannot be countenanced in law. He submits that the Courts below ignored vital evidence and treated the suit schedule premises, as though it is a land, and that the decree deserves to be set aside.

6. Sri D.V.S. Sitharam Murthy, learned Counsel for the respondents, on the other hand, submits that there is a clear recital in the lease deeds, executed in the years 1968 and 1978, to the effect that the leased property is a vacant land, and as such, it is impermissible for the appellants to contend otherwise. He submits that when the terms of the lease were reduced into writing, the documents were registered, and it is impermissible for the appellants to lead any oral evidence, contrary to the terms contained in such deeds. He further submits that even otherwise, the portion of the oral evidence relied upon by the appellants, needs to be understood, in the context of the recitals of the lease deeds, which enabled the lessee to put an improvised shed on the open land, with a clear understanding that it shall be removed at his own cost, while vacating the premises.

7. The second appeal arises out of concurrent judgments of the trial Court and lower appellate Court. The respondents sought for eviction of the appellants, from the suit schedule premises, on the ground that the lease in respect of the property, and subsequently a quit notice was issued u/s 106 of the Transfer of Property Act. The principal contention, urged on behalf of the appellants, was that the provisions of the Act apply to the premises and that the suit is not

maintainable. The plea about agreement of sale was not pursued.

8. On the basis of the pleadings, the trial Court framed the following issues:

(1) Whether the property leased out comes within the purview of the Rent Control Act and a suit for eviction is maintainable?

(2) Whether there is valid quit notice?

(3) Whether the plaintiff is entitled to claim damages, and if so, at what rate?

(4) To what relief?

9. Respondents 1 and 2 were examined as PWs.1 and 2 respectively, and another witness was examined as PW.3, on their behalf. The lease deed, dated 15.11.1968, was marked as Ex.A-1 and another lease deed dated 23.6.1978 was marked as Ex.A-2. Ex.A-3 is the quit notice. The suit schedule property was initially owned by the second respondent, and through the document, Ex.A-10, he sold it in favour of the first respondent. Other documents relate to exchange of notices.

10. On behalf of the appellants, DWs.1 to 7 were examined. Ex.B-1, photostat copy of the registration certificate, issued by the Department of Industries, and Ex.B-2, a licence, issued by the Labour Department were marked. The trial Court answered issues 1 and 2, in favour of the respondents. On issue No. 3, it was held that respondents are entitled for damages at the rate of Rs. 350/- per month.

11. While the appellants herein filed A.S.No. 107 of 1996, aggrieved by the decree of the trial Court, in its entirety, respondents filed A.S.No. 145 of 1996, insofar as the damages awarded only at Rs. 350/- per month; as against their claim. Both the appeals were dismissed, through a common judgment dated 13.8.2001. The respondents did not prefer an appeal, against the dismissal of A.S.No. 145 of 1996.

12. The principal contention urged on behalf of the appellants is that there existed a building or structure, on the suit schedule premises, when the lease was initially granted under Ex.A-1, or at least by the time the lease under Ex.A.2 commenced, and as such, the suit for eviction was not maintainable. The learned Counsel for the appellant had made extensive reference to the cross-examination of PWs.1 and 2, in this regard.

13. It needs to be observed that the lease in favour of Hemasundara Rao, was granted under Ex.A-1, on 15.11.1968. A perusal of the same discloses that an open land, described in the suit schedule, was given on lease, for a monthly rent of Rs. 75/-. There is a recital in Ex.A-1, to the effect that it shall be open to the lessee, to put up a shed, at his own cost, to do his business. He was put under the obligation to remove the same, while vacating the premises. Through out the document, the property is referred to as open land, even in the context of liability to pay municipal tax. The lease was to be in force, for a period of ten

years.

14. Ex.A-2 is dated 23.6.1978, in between Hemasundara Rao and the second respondent. Reference is made to the lease under Ex.A-1. It makes little difference whether Ex.A-2 constituted a fresh lease, or renewal of the one under Ex.A-1. The fact, however, remains that it is in continuation of Ex.A-1, and here again, the property was referred to as open land. The rent was enhanced to Rs. 175/- per month, and it was to be in force, for a period of ten years. The obligation of the lessee to remove the shed, was reiterated in Ex.A-2.

Two subsidiary questions arise in this regard, viz;

- (a) whether it is permissible for the appellants to lead any oral evidence, touching on the terms of Exs.A-1 and A-2? and
- (b) whether the provisions of the Act have the effect of annulling the terms of contract?

15. As for the first question, reference needs to be made to Sections 91 and 92 of the Indian Evidence Act. Section 91 mandates that where the terms of a contract, or of a grant, or of any other disposition of the property, have been reduced to the form of a document, no oral evidence shall be adduced in proof of the terms of such contract, grant or disposition. The document itself or its secondary evidence, if admissible, becomes the basis for proof. Section 92 provides for exclusion of evidence of any oral agreement, when the terms of a contract have been reduced into writing, or whether the contract is required by law to be in writing. Certain exceptions are provided to this general rule. For instance, where a party pleads fraud, intimidation, illegality, want of capacity, absence of contracting party, mistake of law, etc., in relation to the written contract, it shall be open to him to lead oral evidence to prove such factors.

16. It is settled principle of law that any allegation as to fraud, intimidation, illegality, want of execution etc., needs to be specifically pleaded. Unless there exists corresponding plea and an issue framed thereon, it is impermissible to lead evidence thereon. In fact, Rule 4 of Order 6 C.P.C. makes this aspect clear. It reads as under:

"Particulars to be given when necessary :--In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with date and items if necessary) shall be stated in the pleading."

17. In the written statement filed by the appellants, there is not even a whisper about any of these factors, much less a plea or a detailed paragraph. Therefore, it was impermissible for the appellants to lead any oral evidence, in relation to the terms of Exs.A-1 and A-2.

18. Learned Counsel for the appellants tried to maintain a distinction between

the evidence that is adduced on behalf of his clients, on the one hand, and the so-called admissions elicited through PWs.1 and 2, in the cross-examination, on the other. According to him, the admissions extracted in cross-examination of PWs.1 and 2 does not come within the prohibition of Sections 91 and 92 of the Evidence Act. It is difficult to accept this proposition. The expression "oral evidence", referred to in Sections 91 and 92 of the Evidence Act, is not confined to the one to be led by the party opposing the document referred to therein in the form of chief-examination of a witness to be examined by him. The oral evidence includes not only the one, adduced by examining the witnesses, on behalf of such party, but also the cross-examination of witness by the opposite party, in relation to it. An admission or confession of a witness constitutes oral evidence and it makes little difference whether the witness was examined at the instance of the plaintiff or defendant. In other words, the prohibition operates not only in relation to the evidence of witnesses, examined by the concerned party, in relation to documents referred to in Sections 91 and 92, but also to the cross-examination of the witness examined on behalf of other party. What is prohibited directly, cannot be permitted to be done indirectly. Therefore, the distinction urged by the learned Counsel for the appellants cannot be maintained, in law.

19. There is a strong reason underlying the prohibition of oral evidence, to contradict the terms of a written agreement. It is only after the terms and conditions of the contract are crystalized between the parties that a written contract is brought about. Law attaches certainty and sanctity to such terms, unless they are tainted with the factors such as, fraud, undue influence, incapacity, misrepresentation, etc. In the absence of such factors, grant of permission to the parties, to lead evidence contrary to the terms, would defeat the very purpose of the execution of the document and tends to remove the element of sanctity from it.

20. The circumstances, under which the parties to a contract express their consent, cannot be examined on the strength of external factors, or from the point of view of third parties. In a given case, the parties to a contract may agree on terms, which in the normal parlance, may not be tenable or reasonable. However, as long as such terms are not prohibited by law, the freedom of the parties to subscribe to any view, or to contract an obligation, cannot be scuttled. A party, who derived the benefit out of such representation, and the resultant contract cannot turn round, and attack it at a later point of time.

21. Learned Counsel for the appellants relied upon the judgment of the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, to contend that the lessee was left with no option, but to sign dotted lines, and the clauses in Exs.A-1 and A-2 cannot be made binding upon him. At the cost of repetition, it needs to be observed, in this context, that the appellants did not plead any such factor, in their written statement. Therefore, the contention cannot be accepted. At any rate, this Court

does not find any traces of oppression in the clauses contained in those documents.

22. The second aspect is about the purport of the provisions of the Act, viz., whether it has any overriding effect, notwithstanding any clauses to be contrary. The word "building" is defined u/s 2(iii) of the Act, as under:

""Building" means any house or hut or part of a house or hut, let or to be let separately for residential or non-residential purposes and includes:--

(a) the gardens, grounds, garages and outhouses if any, appurtenant to such house, hut or part of such house or hut and let or to be let along with such house or hut or part of such house or hut;

(b) any furniture supplied or any fittings affixed by the landlord for use in such house or hut or part of a house or hut, but does not include a room in a hotel or boarding house;"

The word "tenant" is defined under Clause (ix) of Section 2, to mean the one on whose account, rent is payable for a building. There is nothing in the Act to indicate that even if the subject-matter of a lease is described as vacant land, it shall be treated as a "building", notwithstanding the contract to be contrary. The Act did not employ any non-obstacle clause, in this regard. It is true that the Act is a beneficial legislation, enacted in the interest of the tenants. However, it gets attracted only in relation to buildings, and not vacant sites.

23. When Exs.A-1 and A-2 are clear to the effect that it was only the vacant land that was leased, there is no way the transaction attracts to the provisions of the Act. The improvised shed referred to in the plaint, as well as in the oral evidence of PWs.1 and 2, is nothing but the one raised by Hemasundara Rao, on the strength of the clause contained in Ex.A.1, and he undertook to remove it, on his own, at the time of vacating the leased land. Once it had emerged that it was only a land, at the commencement of the lease, the fact that the lessee had put up a shed, that too, with the specific understanding that it does not alter the nature of the subject-matter; the relations between the parties do not get altered. If the contention of the appellants is to be accepted, the easiest thing for the lessee of a land, to perpetuate his possession, on it, would be, to put a shed on his own accord and claim the benefit under the Act. That was never the object or intention, under the Act, and the submission of the appellants, in this regard, cannot be accepted.

24. At any rate, the Courts below recorded concurrent findings of fact, as to the nature of property. This Court does not find any basis to interfere with the same. The Second Appeal is accordingly dismissed. There shall be no order as to costs.

25. Learned Counsel for the appellants prayed time for his client to vacate the premises.

26. Having regard to the fact that the lease was existing since last several

decades, the appellants are granted time till 31.10.2005, subject to condition that they shall file an undertaking before the trial Court within four weeks from today, that they shall deliver the vacant possession of the land to the respondents on or before 31.10.2005, and that they shall also be under obligation to pay the arrears, if any, within a period of four weeks from today.