

(2006) 02 AP CK 0046

In the Andhra Pradesh High Court

Case No : CRP No's. 732 and 2980 of 2001

Ratanlal Soni

APPELLANT

Vs

Nityanand Sanghi (died per LRs.) and Others

RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 22, 8(5)
Evidence Act, 1872 — Section 116

Citation : (2006) 3 ALD 342

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.V.S. Surest Kumar, in CRP No. 732 of 2001 and Govinda Reddy, in CRP No. 2980 of 2001, for the Appellant; M.V.S. Surest Kumar in CRP No. 2980 of 2001 and T. Sudhakar Reddy, CRP No. 732 of 2001, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The un-successful tenant aggrieved by the reversing order sofar as the ground of denial of title of the landlord is concerned, in R.A. No. 175 of 1997 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad, had preferred C.R.P. No. 732 of 2001 u/s 22 of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter for short referred to as "Act" for the purpose of convenience.)

2. The first landlord-respondent No. 1 died and the legal representatives were brought on record. The landlords filed R.C. No. 377 of 1989 on the file of the Principal Rent Controller, Hyderabad, praying for the relief of eviction on the following grounds :

- (1) Wilful default;
- (2) Denial of title of the landlords;
- (3) Subletting of the premises to third person;

(4) Causing damage to the demised premises, impairing its utility and value.

3. The learned Rent Controller on appreciation of evidence negated all the grounds and dismissed the R.C. Aggrieved by the same, the landlords carried the matter by way of appeal R.A. No. 175 of 1997 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad, wherein, the appellate authority had confirmed the findings of the learned Rent Controller relating to the grounds of wilful default, subletting, causing damage to the demised premises, impaired its utility and value, but, however, reversed the matter on the ground of denial of title of the landlords and ordered eviction. Aggrieved by the same, the tenant preferred C.R.P. No. 732 of 2001 as already referred to supra. The landlords aggrieved by the findings recorded by the appellate authority in relation to the other grounds, preferred yet another Civil Revision Petition No. 2980 of 2001. Hence, both the civil revision petitions are being disposed of together.

4. The parties hereinafter would be referred to as landlords and tenants for the purpose of convenience.

5. Submissions of Sri M.V.S. Suresh Kumar :-Sri M.V.S. Suresh Kumar, the learned Counsel representing the tenant made the following submissions :

The learned Counsel would maintain that the findings recorded by the learned Rent Controller on appreciation of the evidence of PWs.I, 2 RW.1 and Exs.PI to P100, Exs.X-1 to Ex.X-4, Exs.R-1 to R-54 and Exs.C-1 and C-2 are well considered findings. The learned Counsel also would comment that inasmuch as on other grounds, the findings recorded being concurrent findings, the said findings need not be distributed by this Court and hence, the civil revision petition filed by landlords C.R.P. No. 2980 of 2001 to be dismissed. The learned Counsel also would submit that even if Exs.P-90 to Ex.P-92, the relevant portions of the certified copies of depositions in R.C. No. 257 of 2004 to be taken into consideration, it cannot be said that there is a mala fide denial of title on the part of the tenant. The learned Counsel also had drawn the attention of this Court to the relevant provisions of the Act and would comment that absolutely no inconsistent stands had been taken in the prior litigation, where he had figured as a witness in R.C. No. 215 of 1974 and in the present litigation. The learned Counsel pointed out to the relevant portions of the evidence and would comment that the specific stand taken by the tenant is that this property belongs to Hari Bhavan Trust and nothing more and nothing beyond. This stand taken by the tenant cannot be said to be one falling under the ground of denial of title of the landlords. The tenant never had renounced his status as tenant or denied the relationship of landlord and tenant at any point of time, but he had taken a specific stand that Hari Bhavan Dharmasala is the owner of the property. The learned Counsel would maintain that the stand taken by even the landlords is that this premises, the adjacent premises and the properties in the locality belong to Hari Bhavan Dharmasala. May be that these landlords are managing the affairs being the trustees, that would not amount to specific denial of title. The learned Counsel placed strong reliance on the decision of the Apex Court in

Sheela and Others Vs. Firm Prahlad Rai Prem Prakash, .

Submissions of Sri Govind Reddy :

6. Per contra, Sri Govind Reddy, the learned Counsel representing the landlords would maintain that in the prior litigation R.C. No. 215 of 1974, there is a categorical admission relating to the fact that they are the landlords. When that being so, taking a specific plea and denying the ownership even in the counter that itself is sufficient. Apart from the same, the admissions made in Exs.P90 to Ex.P92, the certified copies of depositions in R.C. No. 215 of 1974, are clear admissions relating to the ownership of the present landlords. The deposition of the self same tenant in a prior litigation, who figured as a witness is an estoppel from contending otherwise and in view of the operation of doctrine of estoppel, it may have to be necessarily taken that in the light of the specific stand taken in the counter and also as a witness before the Courts, the only conclusion that can be drawn is that this is a mala fide denial of title of the landlords by the tenant. The learned Counsel placed strong reliance on the decision of the Apex Court in Rita Lal Vs. Raj Kumar Singh, . The learned Counsel also placed reliance on Hyderabad Polmers Private Ltd., Rep. by its Hyderabad Polmers Private Ltd. and Another Vs. Smt. B. Rajani and Others, , V. Murali Krishna Vs. Servel Traders and Others, , Cherukuri Seshadri Vs. Veeramallu Koteswara Rao (died) per LRs., and Englesh Prasad Vs. N. Shravan Kumar, . The learned Counsel would maintain that the very stand taken in the counter denying the title that itself is sufficient to point out that the denial of title of the landlords is a mala fide denial. Apart from the specific stand taken in the counter, not satisfied with it, as a witness also, he had deposed the same. By the mere vague stand taken that this property belongs to Hari Bhavan Dharmasala the tenant cannot escape his responsibility of the denial made by him relating to the title of the landlords, especially in the light of what he had deposed in the prior litigation R.C. No. 215 of 1974. While further elaborating his submissions, the learned Counsel also had taken this Court through the evidence of PW1, PW2 and RW1 and the other documentary evidence available on record and would maintain that even on other grounds, the landlords are bound to succeed. The learned Counsel also had taken this Court through the relevant portions of the findings recorded in relation to the other grounds and would comment that the said grounds were not appreciated properly by the appellate authority.

7. Heard the learned Counsel on record and perused the oral and documentary evidence available on record, findings recorded by the learned Rent Controller and also the findings recorded by the appellate authority as well.

8. The landlords filed R.C. No. 377 of 1989 on the file of the Principal Rent Controller, Hyderabad, praying for eviction on four grounds, which had been referred to supra. Before taking up the further discussion, it may be appropriate to have a look at the respective pleadings of the parties. The landlords pleaded in R.C. No. 377 of 1989 as hereunder :

They are the owners of the demised premises bearing No. 22-5-224, Kalikaman, Hyderabad. They let out the demised premises to the respondent on a monthly rent of Rs.200/-. As per the terms and conditions of lease, the respondent has to pay property tax and electricity consumption charges separately to the respective departments. The respondent apart from the suit mulgi also obtained a room on rent. The same was let out by them subsequently on a monthly rent of Rs.20/-. The present monthly rent is Rs.50/- for the above said additional room. The said additional room is attached to the demised mulgi and the ingress and egress of that room is from the mulgi, the respondent has been paying rent of Rs.200/- to the suit mulgi and Rs.50/- for the additional room. Separate receipts are passing to the same. The tenancy is oral and is month to month. The respondent is not regular in payment of monthly rents and he is in due of rent from January 1987 till the date of filing of this petition i.e., upto September 1989 for a period of 20 months and in arrears of Rs.2,400/- for the suit mulgi and Rs. 1,000/- for the additional room. The respondent wantonly, deliberately and intentionally and to cause loss to the petitioner is not paying monthly rents inspite of repeated demands and request. The respondent has sub-leased the shop without their knowledge and consent he has been collecting rent. On that ground also he is liable to be evicted from the suit premises. The respondent is carrying on his business activities in the shop located at premises No. 22-1-1076 at Kalikaman, Hyderabad which belongs to him. Hence, the respondent is not utilizing the demised premises and the additional room. On that ground also he is liable to evict from the schedule property. The respondent has damaged the flooring, plastering of the demised premises by his carelessness and negligent acts and thus the respondent has materially reduced the utility and value of the suit premises. The respondent in order to harass and cause loss to them, filed a vexatious petition u/s 8(5) of the Rent Control Act in R.C. No. 1098 of 1987 on the file of the Principal Rent Controller, Hyderabad, for deposit of rent and the same is pending. The respondent has falsely stated that the monthly rent of the mulgi is Rs.50/-. To accommodate the respondent, they have been issuing two different receipts for Rs.250/- and Rs.50/- respectively.

9. The tenant filed a counter with the following averments :

The demised premises is owned and possessed by a Managing Trustee of Hari Bhavan Dharmasala and the same has been let out to him by the then Managing Trustee during June 1969. The earlier tenant had kept arrears of rent payable to the Hari Bhavan Dharmasala with effect from August 1968. He was permitted to occupy the demised premises with a condition that he has to pay the arrears of rent of the previous tenant by name Sri Venkata Narasimha. Under those circumstances, on payment of the entire arrears of rent the tenancy was commenced from August 1968 in respect of the suit mulgi. It is false to state that the petitioners are the owners of the demised premises and in fact the petitioners jointly and severally on several occasions represented before several authorities of Government offices, Banks, etc., that the suit property and the other abutting properties to the Dharmasala of Hari Bhavan or Trust properties

besides that the petitioners 2 and 3 on several occasions signed on the rent receipts as trustees of Hari Bhavan Dharmasala. The third petitioner himself represented that A.P. State Co-operative Bank Limited, Hyderabad, Charminar Branch while opening Dharmasala account No. 2070 represented himself as Trustee of the said Hari Bhavan Dharmasala. As such the petitioners' contention as they are the owners is totally false. It is false to state that he is paying Rs. 200/- per month at present to the demised premises i.e., mulgi and Rs. 50/- to the additional room bearing No. 22-5-224. The petitioners have conveniently avoided to mention the date of tenancy. The present monthly rent is Rs. 250/- for the mulgi and the inner room. The other allegations are denied. He has obtained the portion of the mulgi on a monthly rent of Rs. 22/- only and later on it was enhanced to Rs. 25/- per month payable on or before 10th of every succeeding month. Lateron he obtained the inner room of the mulgi on a monthly rent of Rs. 20/- payable on or before 10th of every succeeding month with effect from December 1975 and the two separate receipts were being issued by the trustees. Since 1981 the rent was enhanced for the mulgi and room at the rate of Rs. 50/- and Rs. 45/- a consolidated rent receipt was being issued. During the month of November 1985, the third petitioner opened a bank account in the name of Hari Bhavan Dharmasala in A.P. State Co-operative Bank, Hyderabad, Charminar Branch and instructed him to deposit the monthly rents in Bank as per his instructions, who is one of the Managing Trustee of the Dharmasala, he continued to deposit the monthly rents from November 1995 to July 1987 at the rate of Rs.50/- per month being the rent of the suit premises. The other allegations are false. He is a registered certified goldsmith of Government of India and carrying on business in Gold and Silver ornaments. He also holds a telephone in his name and also possesses a Labour Licence. The premises bearing No. 22-1-1076 is not at all in existence at Kalikaman nor the suit premises is in any way concerned to him till this date. The suit premises is neither owned nor possessed by him. He has been managing the demised premises decently and there is no damage. The petitioners being trustees of Hari Bhavan Dharmasala, avoided to receive the monthly rents from August 1987 at the rate of Rs.50/- per month. He has issued a notice during the year 1987. Lateron, he filed R.C. No. 1098 of 1987 and the same is pending on the file of the Principal Rent Controller, Hyderabad. He also obtained interim order to deposit rents in the Court vide order in I.A. No. 885 of 1987, dated 30-10-1987 and continuously depositing the rent. After deposit of rent in the Court on every month, he has been intimating the same to the trustees of Hari Bhavan Dharmasala. He never committed any wilful default nor in arrears as stated in the petition. The passing of consolidated receipt for the room and mulgi was in fact commenced from September 1986 and the same was continued upto October 1986. Thereafter, at the instance of third petitioner, he continued to deposit monthly rents of the suit premises in the Bank account of Hari Bhavan Dharmasala, on closure of the bank account and after causing legal notice, the monthly rent of the suit premises is regularly being deposited in the Court account.

10. On the strength of the pleadings, the learned Rent Controller framed the following points for consideration :

1. Whether the respondent has committed wilful default in payment of monthly rents from January 1987 to September 1989 ?
2. Whether the monthly rent is Rs.200/ - for the mulgi and Rs.50A to inner room ?
3. Whether the denial of title by the respondent is bona fide ?
4. Whether the respondent has sublet the demised premises and ceased to occupy ?
5. Whether there is any acts of waste ?
6. To what relief ?

11. Further, the learned Rent Controller recorded the evidence of PW1, PW2, RW1, marked Exs.P1 to P.100, Exs.R1 to R54, Exs.X-1 to X-4 and Exs.C-1 and C-2 vakalats. Ex.X-1 and Ex.X-2 are rent receipts and Exs.X-3 and X-4 are the tax receipts.

12. After an elaborate discussion, the learned Rent Controller came to the conclusion that the landlords were unable to establish anyone of the grounds and ultimately dismissed the R.C. The same was carried by the landlords by way of R.A. No. 175 of 1997 on the file of the Additional Chief Judge, City Small Causes Court, Hyderabad-appellate authority. The learned appellate authority at Para 15 framed the following points for consideration, which are as hereunder :

1. Whether the denial of the title by the tenant is a bona fide or mala fide one and if so, liable for eviction ?
2. Whether the tenant committed wilful default in payment of rent from January 1987 to September 1989 and if so, liable for eviction ?
3. Whether the tenant sublet the demised premises and ceased to occupy the same and if so liable for eviction ?
4. Whether the tenant committed acts of waste and thereby impaired the value and utility of the demised premises and if so liable for eviction ?

13. Commencing from Para 16, the appellate authority upto Para 28, discussed the evidence available on record and ultimately came to the conclusion that though all other grounds had not been established, the ground of denial of title of the landlord had been established and ultimately, ordered eviction. Aggrieved by the same, the present civil revision petition is preferred.

14. At Para 21, it is stated that RW1 deposed about certain facts and certain admissions were made. RW-1 stated as follows :

The mulgies and the Dharmasala are in the same compound. The Dharmasala is

adjacent to my business premises and he is tenant since 1968. I obtained the room behind the mulgi in 1975 on a monthly rent of Rs.20/-and he obtained the room from PW1. I have not filed any documents except Municipal receipts to show that the room and the mulgi is my occupation belongs to Hari Bhavan Dharmasala. I do not know the name of the building. Hari Bhavan Dharmasala has been put by the elders of the petitioners on their name. I do not know who made corrections in Exs.R-3 and R-4 and both are dated 31-7-1974. He denied the suggestion that Exs.R-1 to R-9 do not bear the word trust but they bear Hari Bhavan Dharmasala. It is not specifically mentioned in the receipt passed to me that the rents were collected from me on behalf of the trust vide Exs.R-1 to R-9, R- 11 to R-16. It is true that in Exs.R-19 to R-29 there is no mention that the remittance in the bank has been made in the name of Hari Bhavan Dharmasala trust. I do not know who used to operate the bank account in the name of Hari Bhavan Dharmasala. PW1 introduced me in opening the bank account. I know one Narasimha Chary who was the tenant in premises No. 22-5-228. The petitioners also filed eviction case against the said tenant Narasimha Chary. It is true that I deposed in the said R.C. 215/74 and wherein stated that the petitioners are owners of the Hari Bhavan as per Exs.P-90 to P-92. It is true that in Ex.R-32 office copy of the notice dated 20-9-1987 none of the names of the petitioner mentioned as trustees. RW1 further admitted that he obtained the premises from petitioners and he used to pay rents to PW1. There is no lease agreement between them. It was admitted by RW1 that it is not specifically mentioned in the rent receipts passed to him that the rents were collected from him on behalf of the trust as can be seen under Exs.R-1 to R-9, R-11 to R-16. RW1 further admitted in his evidence that Exs.R-19 to R-29 counter foil rent receipts there is no mention that the remittance in the bank has been made in the name of Hari Bhavan Dhannasals trust and he do not know who used to operate the bank account in the name of Hari Bhavan. He further admitted that the signatures on Exs.P-75, P-77, P-78 and Ex.P-61 belongs to him.

15. No doubt, several other admissions said to have been made by RW1 also had been specified in detail. In the light of these admissions, it was further recorded by the learned appellate authority at Para 22 that these admissions made by the tenant conclusively establish that the tenant had taken the premises on rent from PW1 and the said Dharmasala is just adjacent to the mulgies and he has been paying rents to PW1. In R.C. No. 215 of 1974, wherein, the self same tenant figured as a witness as PW2 had specifically deposed that petitioners 1 to 3 are the owners of choultry of the said premises and he knows the tenant therein (respondent) and the respondent also is doing business as goldsmith and had deposed the other particulars. This document and the relevant admissions had been marked as Exs.P90 to P92. Strong reliance was placed by the learned Counsel representing the landlords on the decision in Rita Lal v. Raj Kumar Singh (supra) wherein the Apex Court at Para 6 observed as follows :

There is a very clear admission made by the respondent of the title of the appellant in his deposition made on oath in judicial proceedings. Not a word has

he stated in the pleadings showing how and under what circumstances the statement came to be made and how does the respondent wriggle out of a clear admission made in his deposition. So also the respondent does not furnish any explanation worth being considered, much less accepted, as to how his signatures appear at more than one place, that is, on every page of the rent note dated 10-2-1997, he cannot escape the consequences flowing from execution of the rent note. The tenant having been inducted by the landlord so long as he remains in possession cannot deny the title of his landlord in view of the rule of estoppel contained in Section 116 of the Evidence Act. Recently in *Vashu Deo v. Balakishan*, we had occasion to sum up the law as to estoppel of a tenant and as to eviction by title paramount and we have held (SCC p.57, Para 6)

The rule of estoppel between landlord and tenant enacted in Section 116 of the Evidence Act has three main features :

(i) The tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy;

(ii) such estoppel over the tenancy operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord;

(iii) Section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adopted to suit the requirement of an individual case... the value of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord's title having been extinguished by a paramount title-holder.

The trial Court rightly formed the opinion that no triable issue was raised.

16. No doubt, the learned Counsel representing the tenant made serious attempts to distinguish the said decision on facts. Further, the learned Counsel for the tenant placed strong reliance on the decision *Sheela and Ors. v. Firm Prahlad Rai Prem Prakash* (supra), and would maintain that unless there is a specific renunciation of status by the tenant, the question of attracting the ground denial of title would not arise. Submissions at length were made in relation to this decision *Sheela and Ors. v. Firm Prahlad Rai Prem Prakash* (supra), wherein the relevant provisions of the Transfer of Property Act, 1882 had been dealt with.

17. As can be seen from the judgments referred to supra, both the judgments are of the Benches of equal strength and the decision delivered in *Rita Lal v. Raj Kumar Singh* (supra) is later in point of time. Be that as it may, even in the light of the findings, which had been recorded by the appellate authority and also the material available on record, now, it has to be seen whether the findings recorded by the appellate authority reversing the findings of the learned Rent Controller relating to the ground of denial of title of the landlords to be sustained

or to be disturbed in any way. No doubt, the learned Counsel representing the landlords had placed reliance on several decisions. Hyderabad Polmers Private Ltd., Rep. by its Managers B.S.K. Prasad and Anr. v. Smt. B. Rajani and Ors. (supra), V. Murali Krishna v. M/s. Servel Traders Rep., by its Proprietor Smt. A. Sudhakar and Ors. (supra), Cherukuri Seshadri v. Veeramallu Koteswara Rao and Anr. (supra), S. Suvarnamma v. Andhra Pradesh State Electricity Board, Kadapa Zone and Ors. (supra) and Englesh Prasad v. N. Shravan Kumar (supra), to substantiate his contentions that inasmuch as even at the earliest point of time, in the counter itself, there is denial of title, that itself would be sufficient and also to substantiate his further contention that the tenant as RW1 also had taken the self-same stand, which is contrary to the stand taken by him in the prior deposition in R.C. No. 215 of 1994.

18. On a careful analysis of the whole material available on record, the counter filed by the tenant and also the stand taken by the tenant as RW1 while deposing before the Court and also his prior stand taken in Exs.P90 to P92, this Court is satisfied that such a stand was taken denying the title of the landlords deliberately and intentionally for the reasons known to him and this vague stand taken by him that the property belongs to Hari Bhavan Dharmasala, definitely is not a bona fide stand and may be it is a vague stand taken, just to escape the liability. No doubt, certain submissions were made that inasmuch as several receipts are passed in the name of Dharmasala only, he never denied the title of the trust as such. It is not as though tenant had been inducted recently, he has been tenant for sufficiently a longtime, has knowledge about all the aspects inclusive of the landlords being the owners of the property, including the said Dharmasala. Despite the same, he had taken a specific stand that they are not the owners. There is a specific denial in the counter. Further, the same was emphasized by him as RW1. It is pertinent to note that this stand is totally contrary to Exs.P.90 to 92. Hence, it is an intentional deliberate deviation from the previous statement made by him. It would definitely operate as estoppel since the tenant cannot contend otherwise deviating from the prior stand taken by him in R.C. No. 215 of 1974.

19. Hence, the decision in the later point of time though decided slightly in a different context in Rita Lal v. Raj Kumar Singh (supra), is applicable to the facts of the case to the limited extent that such a stand taken by the tenant would operate as estoppel since having taken a particular stand in prior litigation to take a different stand at a later point of time is impermissible. Viewed from any angle, this Court is satisfied that the findings recorded by the appellate authority on this aspect do not suffer from any illegality whatsoever and accordingly, the said findings are hereby confirmed.

20. As far as the other findings are concerned, in view of the fact that concurrent findings had been recorded by both the Courts below, this Court is not inclined to disturb the said findings, since these are findings based on facts and accordingly, the said findings also are hereby confirmed. Hence, the landlords are bound to

succeed only on the ground of mala fide denial of title, the ground on which the appellate authority had reversed the order of the learned Rent Controller. On all other grounds, the landlords are bound to fail and accordingly, all the findings recorded by the learned appellate authority are hereby confirmed and both the C.R.Ps. are liable to be dismissed and accordingly, the civil revision petitions are hereby dismissed. However, in view of the fact that the tenant has been doing some business for sufficiently a longtime, the tenant is hereby granted four months time to vacate the premises. No order as to costs.