

(1995) 02 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 160 of 1995 and Writ Petition No. 21925 of 1994

S. Eramani

APPELLANT

Vs

Khair Mohd. Khan and Others

RESPONDENT

Date of Decision : 24-02-1995

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 3(4)
Constitution of India, 1950 — Article 226

Citation : (1995) 1 ALT 833

Hon'ble Judges : B. Subhashan Reddy, J;Avinash Somakant Bhate, J

Bench : Division Bench

Advocate : T. Sheshagiri Rao, T.D. Prasannakumar, in W.P. and S. Surya Prakasa Rao, for the Appellant; T. Sheshagiri Rao and T.D. Prasannakumar for Respondent No. 1, Govt. Pleader for G.A.D. for Respondents 2 and 3 and S. Surya Prakasa Rao, for R-1 in W.P., for the Respondent

Final Decision : Allowed

Judgement

B. Subhashan Reddy, J.—The matter came up at the interlocutory stage in the writ appeal. We heard both the counsel as also the learned Government Pleader in extenso even touching the merits of the writ petition. As such we are disposing of not only this writ appeal but also the writ petition. The dispute lies in a narrow compass as the proceedings in question arose under the provisions of A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. In exercise of the powers contained in Section 3(4)(a) of the said Act, the property in question bearing Municipal No. 5-7-279 New Agapura, Hyderabad, has been released in favour of the writ appellant herein who is the third respondent in the writ petition. The property in question, was in possession of the 4th respondent - Mr. Mohd. Sayeed Khan and he was paying rent to the writ appellant. The authorised Officer is empowered to adjudicate the rights inter se landlord and tenant and not micrse landlord and another person setting up rival title. In the instant case the writ petitioner sets up a rival title and in fact he has already suffered a decree of declaration and a permanent injunction. By a decree of declaration which was

rendered in O.S. No. 596/79 of the file of the II Addl. Judge, City Civil Court, Hyderabad, the writ appellant became the owner of the above house and in view of the injunction the writ petitioner is restrained from interfering with the possession and enjoyment of the appellant which presupposes that the petitioner (sic. appellant) has been in possession of the house. While admitting the writ petition, the learned single Judge has granted an order in so far as the mulgi is concerned. But the mulgi is a part of the house and not separate. It is not the case of the petitioner that he is laying claim only to the mulgi and not to the house. When the house and mulgi are composite and when a decree of declaration declaring the writ appellant as the owner has already been passed and when an injunction decree runs against the writ petitioner not to interfere with the possession and enjoyment of the writ appellant and is still subsisting as on this day, acting under Article 226 of the Constitution of India, we cannot extend our hand to perpetuate the illegalities even if the argument of Mr. Seshagiri Rao that the writ petitioner is in possession notwithstanding the injunction, is accepted. The writ petition is not maintainable and if at all there is any remedy for the writ petitioner he has to seek in civil proceedings. It is stated that C.C.C.A. No. 104732 has been filed against the civil decree mentioned above, but even the same was dismissed on 7-2-1991. Mr. T. Seshagiri Rao submits that CMP No. 10759/94 was filed to set aside the above order dated 7-2-1991 and that the same is pending. But the fact remains that the injunction decree has not been suspended and is operative as on this day and it shall operate so long as it is not suspended or annulled. Suffice it to say, that the writ petition is misconceived and the same is accordingly dismissed with costs.

2. The writ appeal is accordingly allowed. No costs.