
(1995) 07 AP CK 0002

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1555 of 1995

Seetarama General Stores Agencies

APPELLANT

Vs

K.S. Sivaramaiyer (died) by LRs.

RESPONDENT

Date of Decision : 18-07-1995

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 22
Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17A, 151

Citation : (1995) 3 ALT 531

Hon'ble Judges : Y.V. Narayana, J

Bench : Single Bench

Advocate : M.S.R. Subrahmanyam, for the Appellant; V.S.R. Anjaneyulu, for the Respondent

Final Decision : Dismissed

Judgement

Y.V. Narayana, J.—The respondent-in R.C.C.No. 84 of 1988 on the file of the learned Rent Controller, Vijayawada filed this Revision Petition against the order dated 10-4-1995 passed in C.M.A.No. 151 of 1994 on the file of the Prl. Subordinate Judge, Vijayawada.

2. The brief facts of the case are: K.S. Sivaramayyar the original petitioner was the landlord of the upstairs building bearing D.No. 11-44-15 and 16 situate in Kummari Street Vijayawada and the respondent is the tenant in the ground floor portion of the schedule building. The petitioner required the petition schedule building for his personal occupation to commence business in boarding. So he requested the respondent-tenant to vacate and deliver the petition schedule building for his proposed business, as the petitioner has no other building to commence the said business. The respondent-tenant promised to vacate the building by end of April, 1988, but he failed to vacate the said premises. Therefore the petitioner filed the petition for eviction. Later on the petitioner K.S. Sivaramayyar died. His legal representatives petitioners 2 to 6 were brought on record. During the life time of Sivaramayier, his evidence was recorded and the

evidence of the respondent-tenant as R.W.I was also completed. But the case is not closed. Subsequent to the death of original petitioner Sivaramayyer, petitioners 2 to 6 were brought on record as his legal representatives. At that time petitioners 2 to 6 filed I.A.No. 2278 of 1994 under Order XVIII Rule 17-A and Section 151 CPC to re-open the evidence of the petitioners and permit them to adduce evidence on their behalf. The respondent-tenant contested the petition contending that the petitioners 2 to 6 are trying to put new evidence, as if the case is filed by them; that the legal representatives must succeed or fail on the basis of the original petitioner's case and that the legal representatives have no right to adduce new evidence at that stage. The trial Court, after considering the material on record and upon hearing counsel for both sides, opined that since the case is not closed and it is at the stage of trial, no prejudice would be caused to the respondent-tenant and for proper adjudication of the disputes between the parties, the petitioner must be allowed permitting the petitioners to put forth their case. Thus finding the trial Court allowed the petition and re-opened the case for adducing petitioners' evidence. Aggrieved by the same, the tenant carried the matter in appeal R.C. C.M.A. No. 151 of 1994 before the Prl. Subordinate Judge, Vijayawada. The lower appellate Court, after hearing the counsel for both parties and after perusing the material on record, opined that the point whether the personal requirement is exclusively for the deceased petitioner for doing the business or for the family of the deceased petitioner is a question of fact which has to be considered on the facts and circumstances of the case which can be done only after the petitioners' evidence is dosed. Thus holding the lower appellate authority dismissed the appeal.

3. Assailing the said order of the lower appellate Court as incorrect and improper, the tenant preferred this revision petition u/s 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act.

4. The learned counsel for the petitioner contended that the cause of action does not survive after the death of K.S. Sivaramaiah, the original petitioner. In support of his contention, he relied upon the decisions reported in *Mohammad v. Ummanaikani* AIR 1930 Mad. 593.; *Thavazhi Karnavan v. Saukunni* AIR 1935 Mad. 52 .; *Inaganti Venkatarama Row Vs. U.R.R.D.K. Venkatalingama Nayanam Bahadur Varu*, ; *V.T. Elaya Pillai Vs. Ramasami Jadaya Goundan*, . and *Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala*, . In *Muhammad Naina Maracair and Others Vs. Ummanaikani Ammal and Others*, ., it was held that the legal representative of a deceased plaintiff is confined to the pleadings and case of the plaintiff whose representative he is and cannot agitate in that suit his own claims against the other plaintiffs in the case though he may do so in any other proceeding. In the instant case the legal representatives of the deceased K.S. Sivaramayar are seeking to re-open the evidence of the petitioners and permit them to adduce evidence on their behalf. They are not introducing any new plea but confined to the pleadings of the original deceased petitioner. Hence the facts of that case have no application to the case on hand. In *Kizhiakalathil Puthan Veetil Thavazhi Karnavan Vs. Manikat Variath Ukkali Varissiar's son Sankunni*

and Others, it was held that a party, who comes into the suit as the legal representative of another party, cannot be allowed to depart from or vary or contradict the attitude taken up by the party whose legal representative he is. In the instant case the legal representatives of the deceased petitioner are not departing from or varying or contradicting the attitude taken up by the deceased original petitioner. Hence the facts of that case have no application to the present case. In *Inaganti Venkatarama Row Vs. U.R.R.D.K. Venkataalingama Nayanim Bahadur Varu*, it was held that where the amendment sought to be made by the legal representative of a party is virtually a denial that a certain transaction which is the basis of the suit is binding on the legal representative, it ought not to be allowed. In the present case the legal representatives of the deceased petitioner are seeking to reopen the evidence only, but not seeking any amendment which is virtually not sought by the original petitioner. Hence the facts of that case are not applicable to the case on hand. In *Elaya Pillai's case* (4 supra) it was held that where the amendment sought it one which the deceased plaintiff himself could not have asked, his legal representative cannot ask for it. In this case the legal representatives of the deceased petitioner are not seeking any amendment which the deceased petitioner himself could not have asked. They are merely seeking permission to reopen the evidence to establish their case. Hence the facts of that case are not applicable to the case on hand. In *Shantilal's case* (5 supra) it was held that in the case of an eviction suit on ground that the landlord requires the premises for occupation as a residence for himself and members of his family, after the death of landlord right to sue survives to the members of the deceased landlord's family. The petitioners in the present case are also seeking reopening of the evidence to establish their case. Though the learned counsel for the petitioner in this revision relied upon this decision, it is helpful to the case of the respondent in this case as it clearly says that the right to sue survives to the members of the deceased landlord's family.

5. Both the Courts below have concurrently found that the cause of action survives in the legal representatives of the deceased petitioner and rightly ordered reopening of the evidence and permitting the respondent herein to let in their evidence. I see no material irregularity or illegality in the order impugned in this revision. The CRP is therefore dismissed, but without costs.