
(2010) 11 AP CK 0064

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No 2709 of 2008

Smt. Yashoda Devi Sarada and Smt. Gangadevi Sarada

APPELLANT

Vs

Poornima Dresses

RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 10(3), 15, 20, 22
Civil Procedure Code, 1908 (CPC) — Section 115, 151

Citation : (2010) 11 AP CK 0064

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : T.V. Rajeevan, for the Appellant; Khaja Mohiuddin, for the Respondent

Final Decision : Allowed

Judgement

B. Chandra Kumar, J.—This revision petition has been filed by the land ladies questioning the orders dated 05.06.2008 passed by the Additional Chief Judge, City Small Causes Court, Hyderabad, in R.A. No. 163 of 2005, confirming the orders passed by the III Addl. Rent Controller, Hyderabad, in R.C. No. 401 of 2001, dated 11.07.2005.

2. It is not in dispute that Smt. Sukhibai Sarada was the original owner of the petition schedule property. The Petitioners herein are the daughters-in-law of the said Sukhibai Sarada. The sole Respondent herein is the tenant. The said Sukhibai Sarada died on 21.07.2001. Thereafter, the Petitioners herein filed the petition under Sections 10(2)(i) and 10(3)(a)(iii)(b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short "the Act") seeking eviction of the tenant on the ground of willful default and also for bona fide requirement of the petition schedule premises.

3. The case of the Petitioners/land ladies is that they have acquired the petition schedule property under a registered Will dated 17.04.2000 executed by Smt.

Sukhibai Sarada. There are three floors in the petition schedule building, which is on the main road in Sultan Bazar, Hyderabad, and the ground floor is occupied by the tenant. The tenant has been doing business in Hosiery and Garments under the name and style

4. "Poornima Dresses" since 1975. Originally, the rent was fixed at Rs. 350/-per month and the same was enhanced from time to time and the present rent is at Rs. 800/- per month i.e., as on the date of death of the original land lady. The further case of the land ladies is that though the tenant has knowledge about the death of Sukhibai Sarada and he attended the funeral procession and ceremony he had sent rents through money order in the name of dead person Smt. Sukhibai Sarada and when the money order was returned with an endorsement that Smt. Sukhibai Sarada died, he did not pay rents and committed default of payment of three months rent i.e., from July 2001 to September 2001. It is also the case of the Petitioners/land ladies that the second Petitioner has a son by name Vishnu and he needs the premises to start a business of his own and that he is having experience and knowledge in garments business. It is also their case that they do not own any other immovable property to start business for the son of the second Petitioner.

5. The specific case of the tenant is that the eviction petition filed on 08.10.2001 is not maintainable, since it was filed within three months from the date of death of Smt. Sukhibai Sarada since the Petitioners became owners of the said premises only on 21.07.2001 when Smt. Sukhibai Sarada died and that the Petitioners ought to have filed the eviction petition after expiry of three months period from the date of death of Sukhibai Sarada. It is also contended that the original Will has not been filed before the Court and that he was not issued any notice terminating the tenancy and that he was not informed about the death of Smt. Sukhibai Sarada. The further case of the tenant is that he came to know about the death of Smt. Sukhibai Sarada only when he received the return money order form with an endorsement about the death of Sukhibai Sarada. It is also his case that he never attended the funeral procession of Sukhibai Sarada. It is the case of the tenant that he remitted the rent for the month of July 2001 by money order and that the same was returned with postal endorsement "payee expired". Then he remitted the monthly rent in the name of Mangilal Sarad, who is the eldest son of Sukhibai Sarada, since he was under the impression that he being the eldest son was authorized to collect the rents and when that money order was also returned to him with an endorsement that payee was not found for seven days, again he remitted the rents for July and August 2001 by money order and the same was also refused and then he got issued a notice dated 28.09.2001 to Mangilal Sarad requesting him to specify the bank account number to enable him to deposit the rents and that there was no reply to his notice and that in the meanwhile the eviction petition was filed. It is also the case of the tenant that Mr. Vishnu the son of the second Petitioner was a minor on the date of filing of the eviction petition and undergoing studies and that he has no experience and knowledge in garments business and that he was not

informed about the bona fide requirement and that the land ladies are having nonresidential buildings in the city and that there is no bona fide requirement as claimed by the Petitioners. The tenant also filed I.A. No. 2 of 2004 in R.C. No. 401 of 2001 to amend his counter contending that the land ladies can use the first and second floors for their business purpose.

6. On behalf of the Petitioners/land ladies, P Ws.1 and 2 were examined and Exs.P1 to P5 were marked. On behalf of the Respondent/tenant R Ws.1 and 2 were examined and Exs.R1 to R53 were marked and Exs.X1 and X2 were also marked through RW.2.

7. The learned Rent Controller formulated the following points for consideration.

1) Whether the Respondent committed default in payment of rents for the months of July 2001 to September 2001 and if so whether such default can be construed as willful default?

2) Whether the petition is not maintainable since the same is filed within a period of three months from the date of the Petitioners becoming owners of the petition schedule premises by virtue of the Will Ex.P2 which came into effect on the date of death of Smt. Sukhibai Sarada?

3) Whether the requirement of the Petitioners with regard to the petition schedule premises is bona fide and genuine ?

8. The learned Rent Controller, on consideration of the oral and documentary evidence, held that though originally a rental agreement was entered into between the original land lady and the tenant on 09.05.1975 for a period of 11 months on a monthly rent of Rs. 350/-, but subsequently it was not renewed from time to time and it became an oral lease and that the tenant could pay the rent on or before first of every succeeding month. The Rent Controller further held that since the tenant has made attempts to send the rents he has not committed any willful default in payment of rents. On second point, the Rent Controller came to the conclusion that since the Will does not fall within the definition of instrument inter-vivos, as such the bar of three months enshrined under proviso to Sub-section (3) of Section 10 of the Act does not apply in this case. Referring to definition of instrument under Transfer of Property Act as there is no definition of instrument in A.P. Rent Control Act, the Rent Controller came to the conclusion that the instrument has been defined as non-testamentary instrument. As far as bona fide requirement is concerned, the Rent Controller came to the conclusion that PW.2 was only a student and that he had no experience in doing business and that the first and second floors of the petition schedule premises are vacant and convenient for carrying on business and thus there is no bona fide requirement for the Petitioners. Accordingly, the Rent Controller dismissed the RC.

9. Aggrieved by the same, the Petitioners carried the matter in appeal. The appellate Court held that since the land ladies have received rent without any

protest on 31.10.2001 i.e., before the date of first hearing of the rent control case it is deemed that the tenant has validly tendered the rents and that there is no willful default in payment of rents. On the issue of bona fide requirement the appellate Court came to the conclusion that since the land ladies have other non-residential premises and the present premises is not bona fide required by them. It was also held that the son of the second Petitioner was only a student as on the date of filing of the petition. On the issue of maintainability of the petition, the appellate Court also came to the conclusion that the petition is maintainable. Since there is no revision petition by the tenant, the finding of the appellate Court on the issue of maintainability of the petition, it became final.

10. Heard Sri T.V. Rajeevan, learned Counsel for the Petitioners and Sri Khaja Mohiuddin, learned Counsel for the Respondent.

11. The points that arise for consideration are; (1) whether the findings of the Courts below are perverse and liable to be set aside, (2) whether the Respondent/tenant has committed any willful default in payment of rents? and (3) whether the Petitioners claim of bona fide requirement is genuine?

12. Sri T.V. Rajeevan, learned Counsel for the Petitioners, submitted that the original land lady was residing in the first floor as on the date of her death and that the tenant's shop is in the ground floor and that on the date of death of the original land lady the tenant's shop was kept open and therefore he cannot say that he had no knowledge about the death of the original land lady. It is also his contention that though the tenant knows about the death of the land lady, rents were sent in the name of dead person and subsequently when the money order forms were returned, the rent was sent to the elder son of the original land lady and sending money orders in the name of dead person or to a wrong person amounts to willful default. It is also his submission that the Courts below have not considered the evidence of PW.1 in proper perspective and they have not considered that the petition schedule premises is in the ground floor and it is in the main business centre Sulthan Bazar and the Petitioners bona fide required the same for establishing the business by PW.2 and relying on the judgment of the Supreme Court in Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and Another, , he submitted that the tenant cannot question whether the landlord has only experience to establish his own business or not. It is also his submission that where the Courts below have not taken into consideration the material evidence and where the evidence was not considered, the High Court while exercising revisional jurisdiction can re-appreciate the evidence. It is also his submission that the revisional powers of the High Court are wider than the powers conferred upon it u/s 115 Code of CPC and the High Court is not precluded from appreciating the evidence for arriving at the conclusion regarding bona fide requirement of the landlord. It is also submitted that now PW.2 has filed an affidavit with regard to bona fide requirement and that the subsequent developments can be taken into consideration. In support of his contention, he has relied upon the judgment in case between Ramesh Kumar Vs. Kesho Ram,

13. Sri Khaja Mohiuddin, learned Counsel for the Respondent/tenant, submitted that both the Courts below have negated the contentions of the land ladies on both the points of willful default and bona fide requirement and when there is a concurrent finding, the revisional court cannot re-appreciate the evidence. In support of his contention he placed reliance on the decisions reported in Management of Kalpataru Vidya Samasthe (R) and Another Vs. S.B. Gupta and Another, and Veerayee Ammal Vs. Seenii Ammal, It is also his submission that in fact the tenant was sick and that he was being treated by RW.2 and that he had no knowledge about the death of original land lady and therefore he had sent rents in the name of original land lady and after knowing about the death of original land lady he had sent money orders in the name of her elder son and when the said money order was also returned, he got issued a legal notice to intimate the bank account number and subsequently he paid rent and all these acts clearly show that the tenant had no intention to commit any default and more over the land ladies have received the rents on the very first date of hearing and therefore there is no default committed by the tenant in payment of rents. As far as bona fide requirement is concerned, it is submitted that PW.2 was minor as on the date of filing of the eviction petition and that he was only a student and he had no experience in doing garments business and that the land ladies have got accommodation in the first and second floors of the same building and that though the subsequent events can be taken into consideration when PW.2 has filed an additional affidavit and he has to be cross-examined. It is also his submission that unless the orders of the Courts below are found to be irregular or perverse no revisional powers can be exercised by this Court.

POINT No. 1:

14. As far as the revisional powers of the High Court are concerned, learned Counsel for the Respondent has relied on the decision reported in Kalpataru Vidya Samasthe v. S.B. Gupta (3 supra), wherein it was held thus.

The High Court in its revisional jurisdiction u/s 115 cannot interfere with the findings of fact recorded by the courts below and reappreciate the evidence and interfere with the findings unless it is found that the findings recorded by the lower court were perverse or that there had been non-application of mind. The High Court, in this case, had not found that the findings of fact recorded by the lower court were perverse or that there had been non-application of mind.

15. As far as the above referred judgment is concerned, the said case deals with the revisional powers of the High Court u/s 115 of Code of CPC and the facts of the said case are entirely different which deals with the service conditions stipulated in the appointment letter. Learned Counsel for the Respondent also relied on the judgment in Veerayee Ammal v. Seenii Ammal(4 supra). That case also arose out of civil dispute basing on an agreement for sale. While disposing of the second appeal an observation was made that the High Court cannot assume jurisdiction to interfere in second appeal just because another view is possible on appreciation of evidence. He has also relied on a decision reported in Babu Lal v.

Vinod Kumar and Anr. 2000(7) SC 399, wherein it was held that the concurrent finding of all lower Courts that premises in question required for bona fide need of landlord and comparative hardship decided in favour of landlord needs no interference.

16. As far as the present revision is concerned, it is filed u/s 22 of the Act, which reads as follows.

22. Revision: (1) The High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceeding taken under this Act by the Controller in execution u/s 15 or by the appellate authority on appeal u/s 20, for the purpose of satisfying itself as to the legality, regularity or of propriety of such order or proceeding, and may pass such order in reference thereto as it thinks fit.

17. This Court, on earlier occasion, in Kolla Veeraswamy (died per L.Rs.) and others Vs. Gondesi Nagara-theemma and others, held that the revisional powers of the High Court are wider than the power of revision u/s 151 of Code of Civil Procedure. It was also held that perverse concurrent findings not based on evidence and record can be interfered with in revision. Learned Counsel for the Petitioners has relied on the judgment in Sri Kempaiah Vs. Lingaiah and Others, , wherein the apex Court observed that the High Court is not precluded from appreciating the evidence for arriving at the conclusion regarding alleged bona fide requirement of the landlord. A reference has been made to the decision in Bhoolchand and Another Vs. Kay Pee Cee Investments and Another, , wherein it was held that the revisional powers of High Court under the Act are wider than the powers conferred upon it u/s 115 of Code of Civil Procedure. Of course, that case arose under Karnataka Rent Control Act, however, the relevant Section 50 of the Karnataka Rent Control Act, 1961 and Section 22 of the A.P. Rent Control Act are in pari materia. Thus, it is clear that where it appears that the findings of the Courts below are perverse and not based on evidence the same can be set aside in the revision.

POINT No. 2:

18. As far as default in payment of rent is concerned, admittedly, no notice was issued to the tenant intimating the death of original landlady or about the Will executed by her in favour of the Petitioners. In the above circumstances, the action of the tenant in sending money orders in the name of original landlady cannot be found fault, though sending of rent in the name of a dead person knowing the fact, amounts to committing of default in payment of rent by the tenant. However, admittedly, as held by the lower appellate Court the land ladies accepted the rents without any protest on 31.10.2001 even before the date of first hearing after filing of the case. The appellate Court also held that where the tenant had tendered the rents on the date of first hearing and when the same is accepted by the land ladies without any protest it has to be treated that there is no willful default on the part of the tenant. The said fact is not disputed by the

learned Counsel for the landladies. Therefore, on this point, I do not find any reason to interfere with the findings of the Courts below.

POINT No. 3:

19. Now coming to the issue of bona fide requirement, admittedly, the Petitioners had specifically averred in their petition that the second Petitioner's son Mr. Vishnu had become major and needs the premises to start business on his own and that he was having experience and knowledge in garments business. It is also their case that they had informed the said fact to the tenant. It is also their case that the petition schedule premises is situated in the heart of the city and in the main commercial place and it is very much suitable for wholesale and retail business in garments and allied products. They had also categorically mentioned that they do not have any immovable property on their own in the twin cities and the petition schedule premises is the joint family premises which has been bequeathed to them by Sukhibai Sarada and that the petition schedule premises is very much suitable to them to start business and that they got means to start the proposed business. It is also their case that at present the son of the second Petitioner is sitting idle and does not have any business in his hand. These facts have been denied by the tenant in his counter. The Respondent's case is that Mr. Vishnu is a minor and undergoing education and not sitting idle and that he has no experience in garments business. The second Petitioner was examined as PW.1 and she has categorically deposed that her son intends to start business in garments and hosiery in the petition schedule property as the locality is very much suitable for the said business and that they have no other property in the twin cities. As seen from the contents of Will Ex.P2 it appears that the petition schedule premises is the only property that was bequeathed to the Petitioners. The tenant (RW.1) admitted that he does not know whether the second Petitioner got only petition schedule property towards her share. PW.2 also deposed that except petition schedule property his parents are not having any other premises in twin cities of Hyderabad and Secunderabad to start his business. Therefore, there is nothing on record to say that the Petitioners are having any other similar premises to enable them to start a business for the son of the second Petitioner.

20. Now, we have to see whether PW.2 was a minor as on the date of filing of eviction petition. PW.2 has given the date of birth of her son Vishnu as 07th June 1983. Admittedly, the eviction petition was filed on 08.10.2001. Therefore, it is clear that Mr. Vishnu became major as on the date of filing of the eviction petition. Of course, he was studying I year B. Com in Pragathi Maha Vidyalaya Degree College of Commerce and Science for the academic year 2001-02. A suggestion was given to PW.1 that two brothers of her father-in-law are residing in Canada and that Mr. Vishnu also intends to go to Canada and this suggestion has been denied by PW.1. It was also suggested to her that Vishnu had no intention to do any business in the city of Hyderabad and the said suggestion was also denied by her. She has admitted that her son Vishnu has not attempted to carry on any business. Of course her explanation is that her son is not having

any premises. According to PW.2 he was studying B. Com., final year as on the date of his giving evidence and that he does not have interest in studies and that he wants to do business. He further categorically deposed that he wants to do the business in hosiery and garments in the petition schedule premises, which is centrally located in the market place and very much suitable for the above said business. In the cross-examination he has admitted that three years are required for completion of Masters Degree in commerce. He further admitted that he has no experience as he had not carried any business. He has also admitted that the ground floor, first and second floors in Sultan Bazar area being used for business purpose. His father is carrying on business in fruits in Kothapet and his uncle is carrying on business at Jamba, Hyderabad. He has also admitted that younger brother of his father is residing in Canada and they have settled there. However, he has categorically deposed that he does not have any interest to go to Canada. RW.1 himself admitted that PW.2 never informed him that he intended to go to Canada and settle there. Of course, PW.2 has admitted that he has not made any attempt to commence any business. He has also deposed that he does not want to carry on business in the first floor and according to him if he carries on business in the first floor more customers will not come to the first floor and that there is no entrance for the first floor from the road side. He further deposed that even if the tenant gives him required accommodation for entrance giving access to the first floor from out of the said shop he does not want to carry on business in the first floor. In this case there is no evidence on record to show that the Respondent-tenant is having any other premises for shifting his business, but admittedly has been doing business since 1975 and the original partners retired and that his sons have joined as partners in his business. Now Mr. Vishnu filed an affidavit stating that still he requires the premises for starting business. The question whether any experience is required for starting business or not, came to be considered by the apex Court in *Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde* (1 supra), wherein it was observed as follows.

If a person wants to start a new business of his own it may be to his own advantage if he acquires experience in that line. But to say that any venture of a person in the business field without acquiring past experience reflects lack of his bona fides is a fallacious and unpragmatic approach. Many a business has flourished in this country by leaps and bounds which was started by a novice in the field; and many other business ventures have gone haywire despite vast experience to the credit of the propounders. The opinion of the learned Single Judge that acquisition of sufficient know-how is a precondition for even proposing to start any business, if gains approval as a proposition of law, is likely to shatter the initiative of young talents and deter new entrepreneurs from entering any field of business or commercial activity. Experience can be earned even while the business is in progress. It is too pedantic a norm to be formulated that "no experience no venture."

21. Now it has to be seen that PW.2's father is doing business. Of course may be in fruits. The uncle of PW.2 is also doing some other business at Jamba,

Hyderabad. So, the family members of PW.2 are in business field. To start a new business if past experience is a precondition then the young persons having talent and new ideas may find it difficult to commence any business. As the society develops the new ideas will come and new ventures will be commenced without any experience in that field and prospects of business depend on the nature of the business, managerial skills, fluctuations in market, locality of business and many other factors. As far as Sultan Bazar is concerned, the evidence on record shows that it is in the heart of the city and having business potentiality. Therefore, the findings of the Courts below that past experience is a pre-condition and that PW.2 has no past experience appears to be perverse. When PW.2 has categorically deposed that he has no interest in studies and he does not intend to go to Canada and that he wants to start his own business why should anybody doubt his credentials. The evidence of P Ws.1 and 2 in my considered view proves that they require petition schedule premises for starting business by PW.2 and their claim is bona fide one. The apex Court in the above referred judgment itself has observed as follows.

When a landlord says that he needs the building for his own occupation there is no doubt he has to prove it. But there is no warrant for presuming that his need is not bona fide. The statute enjoins that the court should be satisfied of his requirement. So the court would look into the broad aspects and if the court feels any doubt about the bona fides of the requirement it is for the landlord to clear such doubts. Even in a case where the tenant does not contest or dispute the claim of the landlord the court has to look into the claim independently albeit the landlord's burden gets lessened by such non-dispute. In appropriate cases it is open to the court to presume that the landlord's requirement is bona fide and put the contesting tenant to the burden to show how the requirement is not bona fide.

22. So, holding that it is not necessary in every case that the landlord should establish previous experience for starting a new business and it cannot be treated as a pre-condition for the claim of bona fide requirement, I am of the view that the findings of the Courts below are not based on proper appreciation of evidence on this point.

23. Coming to the point whether landladies have any other suitable accommodation, I am of the view that even if the landladies have any other premises at any other place, what is to be seen is whether that premises is useful for the business to be commenced by the landladies. Suppose if the landladies have premises in outskirts of the city or in an area where the nature of business being done in that area is entirely different from the nature of business proposed to be done by the tenant, such premises may not be useful to the landladies to commence their own business. Therefore, what is required to be seen is whether the claim of bona fide requirement is genuine or not and whether the facts and circumstances of the case show that the claim is just and reasonable and whether it is made with a sole mala fide intention to evict the

tenant. Therefore, the Courts" have to consider all the relevant facts and circumstances to come to a just and reasonable decision.

24. It has to be seen that PW.2 gave evidence in 2003 and now we are in 2010. He claims that still he is in need of premises. Even if present affidavit is not taken into consideration, PW.2 had categorically stated that he was not interested in studies. Even otherwise, nothing prevents a person from starting and doing business even while continuing his studies. It is contended by the tenant that the landladies can start business in the first floor or second floor and in that area business is being done in first floor and second floor premises. But, however, according to PW.2, he may not be successful if he starts business in first floor. He has specifically deposed that if he starts business in the first floor, he may not get customers. Having regard to the evidence of PW.2, it cannot be said that the first floor and second floor of the same premises will be useful to PW.2 for starting new business. It has also come on record that PW.1 and others were residing in the first floor of same building four or five years prior to the death of the original landlady and if at all the first floor was useful for starting business, in all probabilities PW.2 would have started business in the first floor when the original landlady shifted her residence to some other area or soon after the death of original landlady. It appears that the reasons given by PW.2 are genuine. As far as comparative hardship that may be caused to the parties, the following circumstances appear to be in favour of landladies. Admittedly the tenant has been doing business since 1975, original other partners already retired. Now his sons have joined as new partners. The litigation has been pending since about 10 years. PW.2 now wants to start a new business. Therefore, it appears that if eviction is not ordered, the landladies would be put to great hardship when compared to the hardship that may be caused to the tenant. In view of the above discussion, I hold that the courts below ought to have allowed the petition on the ground of bona fide requirement.

25. In the result, the CRP is allowed and the impugned orders are set aside. Consequently, the petition filed by the Petitioners stands allowed. The Respondent/tenant is granted four months time from today to vacate the petition schedule premises and hand over the vacant possession of the same to the Petitioners. No costs.