
(1991) 01 AP CK 0016
In the Andhra Pradesh High Court
Case No : C.R.P. No. 8 of 1988

Soni @ Bhuthulasi and Others

APPELLANT

Vs

Kunda Nageswara Rao and Another

RESPONDENT

Date of Decision : 31-01-1991

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 10(2), 12, 13, 22
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Citation : (1991) 3 ALT 200 : (1992) 1 APLJ 178

Hon'ble Judges : Jagannadha Rao, J; Eswara Prasad, J

Bench : Division Bench

Advocate : M.V. Ramana Reddy and V. Ravindra Rao, for the Appellant; M.S. Prasad and K. Ramakrishna Reddy, for the Respondent

Judgement

Jagannadha Rao, J.—These revisions have been referred to a Division Bench by our learned brother Lakshmana Rao, J. The point that arises for decision is whether a third-party who disputes the title of the landlord filing the eviction petition, could seek to get impleaded under Order 1, Rule 10 (2) C.P.C. and seek an adjudication on the question of title. A division Bench of this Court consisting of Jayachandra Reddy, J (as he then was) and Immaneni Panduranga Rao, J, in *G. Manikamma v. T. Seetharamaiah* 1988 (2) ALT 333 : 1988 (1) L.S. 39 has held that the third-party raising a dispute as to title could be impleaded under Order 1, Rule 10(2) C.P.C. because, the provisions of the CPC apply to proceedings before the Rent Controller. However, Muktadar, J. in *Sitarama Rao v. Ratanlal Panwar* 1982 (1) An.W.R. 276 and T.L.N. Reddy, J in *Kotamma v. Kotilingam Chetty* 1983(1) ALT 41 observed that the Rent Controller cannot decide complicated questions of title and a similar view was earlier expressed by K.V.L. Narasimham, J (as he then was) in *Lingayya v. Lakshminarasamma* 1962(1) An. W.R. 294.

2. It has, however, been argued before us for the landlords by Sri V. Ravindra Rao and Sri M.S. Prasad that it is one thing to say that Order 1, Rule 10 C.P.C.

applies to proceedings before the Rent Controller and another thing to say that the third party could seek to raise a question of title for decision in the Rent Control Court. They contend that the implication in the proviso to Section 10(1) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter called "the Act") is that all parties could be impleaded under Order 1, Rule 10 C.P.C so long as they do not raise any question of title for adjudication before the civil court. On the other hand, it is contended by Sri K. Ramakrishna Reddi and Sri M. V. Ramana Reddi for the proposed parties that once it is accepted that the CPC applies to proceedings before the Rent Controller and that, therefore, Order 1, Rule 10 C.P.C. applies, it cannot be contended that only such third parties who do not raise questions of title, can be impleaded. They contend that once Order 1, Rule 10(2) C.P.C. applies, "all questions involved" in the suit must include all questions of title relating to the property and the said words cannot be restricted to "all questions between the parties to the suit" in view of the Division Bench judgment of Kondaiah (as he then was) and P. Ramachandra Raju, J, in Khaja Abdul Khader Vs. Mahabub Saheb and Others, .

3. So far as the general question as to whether the provisions of the C.P.C. apply to proceedings before the Rent Controller is concerned, it is sufficient to refer to the guarded language in the Division Bench judgment in Harikishan Singh v. B. Narayana 1969 (2) APLJ 290 wherein it was observed that the C.P.C. does apply provided there was no adequate provision in the Act or Rules and provided it does not offend the Scheme and Purpose of the Act. Ekbote and Kuppuswami, JJ (as they then were) observed as follows:

" We are inclined to agree with the view that the provisions of the C.P.C. would, as far as possible, be applied to the proceedings under the Rent Control Act, in cases where no adequate provision is made in the Act or in the Rules and provided that the provisions sought to be supplied are not inconsistent with any express provisions of the Act or with the scheme and purpose of the enactment"

4. The above view of the Division Bench has been approved by a Full Bench of five Judges in Pallapothu Narshimha Rao and Another Vs. Kidanbi Radhakrishnamacharyalu, by adopting the same words of caution. Once the CPC is applicable, it must follow that the provisions of Order 1, Rule 10(2) C.P.C. are also attracted and third parties could subject to the above reservation, - file applications for being impleaded under Order 1, Rule 10(2) C.P.C.

5. On the question of the competency of the Rent Controller to decide questions of title at the instance of third parties, it is, therefore, necessary to see if there is anything in the scheme and purpose of the Act which leads to an inference that the Rent Controller cannot decide questions of title. The proviso to Section 10(1) of the Act is, in this context, important. Section 10(1) reads:

"Section 10: Eviction of tenants: (1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this Section or Sections 12 and 13.

Provided that where the tenant denies the title of the landlord or claims right of permanent tenancy, the controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil court and the court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded".

6. In fact, Clause (vi) of Section 10(2) provides that a tenant is liable for eviction if the denial or claim of the tenant regarding the title of the landlord is "not bona fide".

7. It is, therefore, clear that, in the court of the Rent Controller, where the landlord applies for eviction, the only question that the Rent Controller is competent to decide is whether the denial or claim of the landlord's title by the tenant, if any, is bona fide or not. If it is bona fide, the landlord can sue in the civil court for eviction on one or other of the grounds mentioned in Sections 10, 12 or 13 of the Act. If it is not bona fide, the landlord can get eviction before the Rent Controller in as much as such a denial or claim of a tenant as regards the landlord's title, if it is not bonafide, permits eviction to be ordered by the Controller. In our view, the above provisions in the proviso to Section 10(1) read with Section 10(2)(vi) clearly indicate that even when a tenant, who is a party to the eviction proceeding raises a dispute or claim as to the title of the landlord, the Rent Controller has no jurisdiction to decide whether the landlord has title to the property or not. The limited jurisdiction that is conferred by the Act on the Controller is to decide whether the denial or claim by the tenant is bonafide or not. If that is the position of a tenant who is a party to the eviction case, it is, in our opinion, clear that a third party who proposes to get impleaded in the eviction proceeding before the Rent Controller is a fortiori precluded from joining in for the purpose of a decision on the question as to the landlord's title. (In our view, the Act is a special Act by which a statutory protection is framed to a tenant and, at the same time, the landlord is intended to have a speedier remedy than in a regular suit. It is not the intention of the legislature that complicated questions of title are to be adjudicated by the Rent Controller. The proper procedure for the third party would be to file a regular civil suit before a civil court for deciding the dispute as to title raised by him and obtained appropriate relief.)

8. It is, however, argued that every court or tribunal of limited jurisdiction always has power to decide incidental questions or collateral facts on which its jurisdiction depends. On that analogy, it is argued that the basis for the filing of an eviction petition is that there is the relationship of landlord and tenant between the parties who are before the Rent Controller and that he must necessarily have the power to decide whether such relationship existed or not. Reliance for this purpose is placed on the famous dictum of Lord Esher in *The Queen v. Commissioner For Special Purposes For The Income-Tax*, (1888) 21

Q.B.D 313 which was explained and applied by the Supreme Court in *Desika Charyulu v. State of A.P.* AIR 1964 Sc 809.

9. It is true as stated by the Supreme Court that, whenever an inferior court or tribunal or body, which has to exercise the power of deciding facts is first established by Act of Legislature, the legislature has to consider what powers it will give to that tribunal or body. It may, in effect, say that if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There, it is not for them conclusively to decide whether that State of facts exists, and if they exercise jurisdiction without its existence, what they do may be questioned and it will be held that they have acted without jurisdiction. But, there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislatures are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. It is true that in the second of the two cases, it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further existence of their jurisdiction depends, and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction. *Desika Charyulu v. State of A.P.* (9 Supra). In that case, the Supreme Court pointed out that the purpose of the special Act and scheme has also to be looked into. Ayyangar, J observed:

"It is manifest that the answer to the question as to whether any particular case falls under the first or the second of the above categories would depend on the purpose of the statute and its general scheme, taken in conjunction with the scope of the enquiry entrusted to the tribunal set up and other relevant factors".

Applying the said principles, it will be noticed that the Act created the Rent Controller and vested certain jurisdiction in him for deciding whether any of the grounds for eviction of a tenant by a landlord existed, but did not confer any express power enabling the Controller to decide the jurisdictional fact with any attribute of finality. The Rent Controller could decide only whether the denial of the title of the landlord was bona fide. He cannot decide the question as to the existence of title with any finality. Therefore, the scheme and purpose of the Act indicates that the principle laid down in *Desika Charyulu's* case (9 supra) cannot wholly be applied to the situation under the Act when the third party raises a question of title. What a tenant cannot achieve before the Rent Controller a third party cannot be permitted to achieve.

10. It is again important to notice that so far as the third party seeking to get

impleaded is concerned, he is not seeking a decision only incidentally on the question of title. So far as he is concerned, the question of title is the main question in which he is interested and normally, he has to go to the civil court for an effective decision thereon. This, in our opinion, is an important consideration to deny a third party any right to get impleaded in an eviction case before the Rent Controller for the purpose of raising a dispute as to title.

11. It is true that, a Division Bench of this Court has held in *Khaja Abdul v. Mahabub Sahed* (5 supra) that once Order 1, Rule 10(2) C.P.C. applies, "all questions involved in the suit" would have to be decided in the same suit and the court is not confined to questions "between the parties to the suit", but has to decide all questions in relation to the property. The idea is to decide all questions of title in one "suit", so that they may be res judicata in all later cases. But, in our opinion, this decision cannot apply because, there can be no finality to any decision on title that may be given by the Rent Controller. The advantage of all issues of title being decided in one suit is not available so far as the Rent Controller's decisions are concerned for, he can if at all decide only incidentally and not finally. The Rent Controller can decide only whether the denial of title is bona fide. If the denial is bona fide, even then the Rent Controller does not have the further jurisdiction to decide the question of title and the landlord would then have to move a civil court as stated in proviso to Section 10(1). The purpose appears to be to enable the civil court to decide the question of title of the landlord finally and not the Rent Controller. Even the civil court has initially to decide the question of title and then only go into the question of eviction on any of the grounds for eviction stated in Sections 10,12 and 13.

11. In fact, it has been held in *Amrutlal v. Principal Rent Controller* 1978 2 ALT 102 : 1978 (1) RCJ 563 that if a landlord wants to file a civil suit, such a suit can be filed only after the Rent Controller records a decision that the denial of the landlord's title by the tenant is bona fide. Such a finding is a condition precedent for the filing of a suit and even if filed, eviction can be only on one of the grounds in Sections 10,12 or 13 of the Act, if the Act is applicable to the premises.

12. It is then argued that the Division Bench in *G. Manikyamma v. T. Seetharamaiah* (1-supra) had held that the provisions of Order 1, Rule 10(2) C.P.C. apply even though the third party seeks to raise a question of title before the Rent Controller in the eviction case. No doubt, there are certain observations in the said judgment, particularly when the Bench sought to distinguish *Lingayya v. Lakshminarasamma* (4 supra) and when it referred to the proviso to Section 10(1). But, with great respect, we are unable to agree with the observations. We would, in the normal course, have referred the question to a Full Bench, but we find it unnecessary to so refer to a Full Bench in view of the recent decision of the Supreme Court in *Life Insurance Corporation of India Vs. M/s. Indian Automobiles and Co. and others*, . In that case, the Supreme Court had occasion to deal with the jurisdiction of the Rent Controller to decide a question of title and also referred to the proviso to Section 10(1) of the Madras Act which is

identical in language with the proviso to Section 10(1) of the Andhra Pradesh Act. The Supreme Court observed, referring to the Rent Controller and to the Court of Small Causes, which was the appellate Court, as follows:

"Lastly, the 1969 decision of the Court of Small Causes was only concerned with the question whether there was denial of L.I.C's title by the tenant and, if so, whether it was bona fide. It was only this limited aspect eviction on the ground of non-bona fide denial of title that was under consideration of the Court u/s 10(2)(vii) of the Act read with the proviso to Section 10(1) and the Court's observations on the question of title were one on a collateral issue".

The Supreme Court further accepted the contention raised in that case by Sri Parasaran that:

".....a tribunal of limited jurisdiction like the Rent Controllercannot be clothed with jurisdiction to decide far-reaching questions of title to immovable property".

After referring to the proviso to Section 10(1) and Section 19(corresponding to Section 16 of the Andhra Pradesh Act), the Supreme Court observed: "There are clear indications in the Act and Rules that the Rent Controller does not have the jurisdiction to decide questions of title. In a proceeding under the Act, whether it be for fixation of fair rent or eviction, the tenant may raise several objections".

Their Lordships emphasised:

"....since the Rent Controller has no jurisdiction to entertain an application except by a landlord or a tenant, the question of title to the property is one on which his very jurisdiction depends. It cannot be described as a matter that is squarely and directly in issue in these proceedings to which any finality can be attached, as the Rent Controller by deciding the issue wrongly cannot clothe himself with jurisdiction where none exists....That the Rent Controller's jurisdiction is limited is clear from the proviso to Section 10(1) of the Act".

Finally, it was observed by the Supreme Court in very clear terms:

"In order to decide whether the denial of the landlord's title by the tenant is bonafide, the Rent Controller may have to go into the tenant's contention on the issue but he is not to decide the question finally. He has only to see whether the tenant's denial of the landlord's title is bonafide in the circumstances of the case. He may reach a conclusion on the merits, that the landlord has title, yet he cannot order eviction if the tenant's action in denying the title was bona fide. Per contra, he may reach the conclusion on the material before him that the landlord has no title; yet, it seems, if he finds that the applicant is otherwise a landlord and that the grounds on which the tenant's denial was based were not bona fide, we will have to order eviction".

Their Lordships again stated that "a question of title may be a complex one involving difficult issues. For instance, the "owner" may claim title under an adoption or a will or a trust deed or a gift deed and there may be contentious

claims among several persons which it will not be possible for the Rent Controller to decide...The terms of Section 11 C.P.C including Explanation VIII, are not comprehensive/enough to cover the case".

13. All the above observations of the Supreme Court which relate to the denial or claim by a tenant, in our view, apply with greater force in respect of an application by a third party. In view of the above observations of the Supreme Court, we respectfully dissent from the observations in *G. Manikyamma v. T. Seetharamaiah* (1-supra).

14. It has then been argued that, if a third party who raises a question of title is not allowed to intervene, the possibility of persons without title filing collusive suits for eviction against tenants might arise. In our view, such a situation is rare and even if there is one, there are adequate remedies in the civil law to seek declarations that proceedings in another court or tribunal are collusive. In fact, the greater advantage in not allowing third parties to intervene and raise questions of title, is that unscrupulous tenants cannot any longer get collusive applications filed by the third parties claiming title so as to protract the rent control proceedings. The advantage of denying to third parties the right to raise questions of title, in our view, far outweighs the doubtful advantage of permitting such persons to get impleaded.

15. We would, however, like to state that it is not as if Order 1, Rule 10 C.P.C. would never be attracted to proceedings before the Rent Controller. A legatee or a purchaser or other person or a sub-tenant or any other person can always get impleaded so long as he is not raising any dispute of title or so long as his title is not disputed. Similarly, if the landlord and the tenant agree for the third party being impleaded and if no question of title needs to be decided, the application under Order 1, Rule 10 C.P.C. can be allowed. It is only where a disputed question of title is raised or has to be decided at the instance of the third party that it can be said that the scheme of the Act does not permit such impleading.

16. For all the aforesaid reasons, we are of the view that the applications filed under Order 1, Rule 10(2) C.P.C. by the third parties in the batch of cases before us, raising disputes as to title, are liable to be rejected. In C.R.P. No. 8 of 1988, the eviction petition was filed in 1983 and then I.A.No. 6 of 1985 was filed by the third party under Order 1, Rule 10(2) C.P.C. raising a dispute as to title. The Rent Controller dismissed the LA. and the same was confirmed in C.M.A.No. 22 of 1985. We, therefore, dismiss C.R.P.No. 8 of 1988. In C.R.P.Nos. 4095, 4096, 4043 and 4097 of 1988, the Rent Controller dismissed similar applications filed in each case, but on appeal, the appellate authority allowed the same. We accordingly allow these four C.R.Ps and restore the order of the Rent Controller. There will be no order as to costs in all cases.

17. We find that the main Rent Control Petitions are of the year 1983 or 1984 in this batch of cases. As they have been unnecessarily delayed for the last seven years, we direct the concerned Rent Controllers to dispose of the Rent Control

Petitions expeditiously, at any rate, within four weeks of the receipt of this order in the light of the above said principles.