
(1977) 01 AP CK 0002
In the Andhra Pradesh High Court
Case No : S.A. 428 of 1975

Thalabathula Varaha Narasimha Charyulu	APPELLANT
Vs	
Gudivada Kanakaratnam	RESPONDENT

Date of Decision : 24-01-1977

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 32(b)
Transfer of Property Act, 1882 — Section 106

Citation : (1977) 01 AP CK 0002

Hon'ble Judges : Sambasivarao, J; Madhusudhan Rao, J

Bench : Division Bench

Advocate : C. Poornaiah, for the Appellant; M. Jagannadha Rao, for the Respondent

Final Decision : Allowed

Judgement

Mr. Sambasivarao, J.—This second appeal, despite the concurrent conclusions arrived at by the lower courts, must be allowed. It is preferred by the defendant who has been unsuccessful in the courts below. The defendant took certain premises on lease under Ex. B.I dated 24th December, 1957. He occupied it on 1-1-1959. The original lease was for three years. On the expiry of the period the plaintiff asked him to vacate, when he did not do so, on 26th February, 1965 the plaintiff issued to the defendant a notice under Sec. 106 of the Transfer of Property Act to quit and thereafter refused to receive rents. The defendant filed a petition, before the Rent Controller for a direction to the Plaintiff to receive rents. The Rent Controller, however dismissed the petition saying that the building was constructed after 1958 and therefore the petition could not be ordered. Thereafter the plaintiff filed the suit for possession and for profits.

2. The defendant (present appellant) resisted the suit on the ground that he was entitled to the protection of the A.P. Buildings (Lease, Rent and Eviction) Control Act. 1960 and the civil court had no jurisdiction to entertain the suit. What took place in December, 1958 was only remodelling or reconstruction of the house.

Therefore, it was not a new house within the meaning of Sec. 32 (b).

3. The trial court as well as the appellate courts repelled the contention of the plaintiff that the defence of the defendant was barred by Res Judicata by virtue of the decision in O.P.5/65 filed by the defendant for a direction that the rents might be deposited before the Rent Controller. The only question which was considered and held in favour of the plaintiff and against the defendant was whether the construction was a new one within the meaning of Sec. 32 (b) of the A P. Buildings (Lease. Rent and Eviction) Control Act or was only a reconstruction or remodelling of the old one.

4. From the facts found by the courts below these circumstances emerge: there was an old building which had tiled roof. That tiled roof was removed and a terraced roof was put instead, The roof level was raised and the basement level was also raised. The newly laid terrace was of RCC in the place of the titled roof. The rain water would still be disposed of through the side drain as usual. A new site adjacent to the old building was acquired and the plinth area was extended by removing the intervening wall and constructing an additional room. Thereby the plinth area was increased by 295 Square feet. The question is whether this is tantamount to a new construction within the meaning of Sec. 32 (b). Here it must be noted that this construction or reconstruction was done in December, 1958. If it is to be considered as a new construction within the meaning of Sec.32 (b) then the Rent Control Act would not apply and the suit would be maintainable. If it is merely remodelling of an existing building, then the Act would apply and the suit would not be maintainable.

5. From the findings of the courts below it emerges that what was done was only remodelling of the previously existing building by expanding the plinth area and by raising the basement level as well as the roof level" The substratum and the structure of the building remained with some more accommodation added. Then it cannot be called a construction within the meaning of Sec. 32 (b). This is what one of us (Sambasivarao J) observed in Krishnachari vs. N.R.S.C. Charitable Fundi 1972 (2) A.P.L.J. 220.

"If a room or two are added and plastering of the wall is done, it is not reasonable to say that the building is constructed, when the building is substantially the old one. If the entire building or a substantial portion of it is pulled down and rebuilt, then it might be construction" within the meaning of Section 32(b) of the Act. But where the substratum and the structure of the building remains and some repairs are done to it and a few rooms are added, it is unreasonable to say that it is "construction" for the purpose of the said provisions."

6. These observations clearly apply to the facts and the circumstances of the present case. It is not necessary even to take the more extreme view taken by A.V. Krishnarao J. in Desi Kotaiah vs. I. Suryanarayanarao 1976 (1) APLJ 249 : 1976 A.L.T. 81 (N. R. C.) about Sec. 32 (b). Undoubtedly from the facts found by the courts below it is patent that it is only remodelling or reconstruction of a pre-

existing house with a little more accommodation added. Therefore Section 32 (b) has no application and the suit of the respondent is not maintainable. In this view, the decrees and judgments of the courts below are set aside and the second appeal is allowed with costs.