(2002) 07 AP CK 0003

Andhra Pradesh High Court

Case No: Second Appeal No. 218 of 1992

Korapotu Veera Narayana		APPELLANT
	Vs	
K. Santhamurthy and Another		RESPONDENT

Date of Decision: July 30, 2002

Acts Referred:

- Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 19, 3(6)
- Transfer of Property Act, 1882 - Section 108

Citation: (2003) 2 ALT 206

Hon'ble Judges: G. Yethirajulu, J

Bench: Single Bench

Advocate: N. Ramamohanrao, for the Appellant; C. Sadasiva Reddy, for the Respondent

Final Decision: Allowed

Judgement

G. Yethirajulu, J.
This appeal is directed against the judgment and decree in A.S.No. 89 of 1988 on the file of the Sub-Court, Nandyal reversing the judgment and decree of the Principal District Munsif, Nandyal in O.s.nO. 132 of 1984.

2. The appellant herein is the 1st plaintiff and the respondent is the defendant in the suit. The plaintiffs filed the suit for permanent injunction to restrain the defendant from demolishing or effecting repairs or in any manner meddling with the plaint schedule building.

3. The plaintiffs averred that the suit schedule building and the open site bearing D.No. 4/552 belongs to them and it was let out to the defendant for running a school in or about 1972 and since then the defendant is continuing as a tenant of the said building. They further pleaded that they came to know that the defendant is contemplating to demolish a portion of the building and to effect some minor repairs to it and if the defendant demolishes a portion of the building there is every

likelihood of the entire building coming to ground. Hence the suit for the above reliefs.

4. The defendant resisted the suit by contending that the defendant never contemplated to demolish any portion of the building, but he intended to carry on some repairs as he was doing the same ever since the building taken on rent. The defendant effected some repairs to make the building fit to reside and to keep the same in tact. The repairs undertaken by him do not cause any damage to the building and the plaintiffs should have been happy for the defendant effecting necessary minor repairs periodically. The suit is therefore liable to be dismissed with costs.

5. The trial Court on the basis of the above pleadings framed appropriate issues and after considering the evidence adduced by both parties decreed the suit by granting the following reliefs:

(a) A permanent injunction shall be issued against the defendant restraining him from demolishing or meddling in any manner of the plaint schedule building.

(b) The plaintiffs have to effect any minor repairs that are required for the building.

(c) The defendant can approach the Rent Control Court for the permission to effect minor repairs in case the plaintiffs failed to effect any such minor repairs.

6. The defendant being aggrieved by the judgment and decree of the trial court dated 9-3-1988 preferred an appeal before the 1st appellate Court. The 1st appellate court reversed the judgment of the trial court through its judgment dated 23-1-1992.

7. The 1st plaintiff being aggrieved by the judgment and decree of the 1st appellate court preferred this appeal challenging its validity and legality.

8. The only substantial question of law, as seen from the ground Nos. 2 and 3 of the Memorandum of Appeal, to be considered by this court is as follows:

Whether the 1st appellate court erred in reversing the judgment of the trial court and in not observing that the injunction was only to restrain the tenant from demolishing or meddling with the suit schedule building or undertaking repairs without issuing notice to the plaintiffs or obtaining orders of Rent Controller?

Point:

9. The plaintiffs contend that the defendant is undertaking repairs and is proposing to demolish a portion of the suit schedule building. The defendant in the written statement conceded that he is periodically undertaking minor repairs to make the building habitable from time to time. The landlord and tenant relationship is not in dispute between the parties. The defendant instead of following the procedure prescribed under law and asking the plaintiffs to undertake the repairs, assumed on

himself the right to undertake the repairs whenever necessary. In this regard, it is essential to refer to the specific provisions covered in the Transfer of Property Act, 1882 and the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960.

10. Section 108(f) of the Transfer of Property Act, 1882 reads thus:

108. Rights and liabilities of lessor and lessee: In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:

(a) xxx

(b) xx

(c) xx

(d) xx

(e) xx

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;

(g) xxx

11. Section 19 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 reads thus:

19. Failure by land-lord to make necessary repairs: If a landlord fails to make necessary repairs to the building within a reasonable time after notice is given-

(a) by the authorized officer in respect of a building of which the Government shall be deemed to be the tenant under Sub-section (6) of Section 3;

(b) by the tenant of any other building, the authorized officer aforesaid may, in the case referred to in Clause (a), make such repairs or have them made by the allottee and deduct the cost thereof from the rent payable for the building or ask the allottee to make such a deduction from the rent payable; and the Controller may, in the case referred to in Clause (b); direct, on application by the tenant, that such repairs may be made by the tenant and that the cost thereof may be deducted by the tenant from the rent payable for the building:

Provided that the cost of repairs, and the deduction thereof which the authorized officer or the Controller, as the case may be, may authorize shall not exceed in any one year one-twelfth of the rent payable in respect of the building for that year.

12. In M.V.S. Prasada Rau Vs. K. Mangamma, single Judge of this Court held that the tenant cannot carry out repairs and deduct the cost on his own, without a notice to landlord or approaching Rent Controller for directions.

13. In view of the above provisions of law and the principle laid down by this court in Mangamma (1 supra), the defendant being a tenant of the plaintiffs is not supposed to undertake the repairs to the suit building without first asking the plaintiffs to undertake those repairs by issuing a notice or approaching the Rent Controller for the said purpose.

14. The defendant is entitled to undertake repairs only in the event of the plaintiffs refusing to undertake such repairs after receipt of a notice to that effect by spending an amount of not more than one-twelfth of the annual rent being paid to the plaintiff. Even if there is a genuine requirement of undertaking the repairs, the defendant is not supposed to give an impression to the plaintiffs, who are the owners of the house, that without their consent some alterations are being made. The defendant should not create a kind of apprehension in the minds of the plaintiffs that the building is likely to be damaged if he undertakes the repairs without informing them.

15. The trial court after considering all these aspects rightly came to a conclusion that the plaintiff is entitled for a decree, but the 1st appellate court instead of referring to the relevant provisions and appreciating the situation went wrong in making general observations that the plaintiff is not entitled for perpetual injunction. The 1st appellate Court is supposed to consider whether there was any violation of the rule which is required to be followed by the defendant and in the event of violation of such rule, it is for the court to check the defendant from further violation of such rules. There is a categorical admission on the part of the defendant that he is undertaking the repairs to the suit building as and when required without requesting the plaintiffs to undertake such repairs. Under those circumstances, I am constrained to hold that the 1st appellate court failed to analyse the evidence in the proper perspective and there is perversity in the judgment of the 1st appellate court in reversing the judgment of the trial court.

16. In the light of the above circumstances and in view of the relevant provisions of law and the legal position I am of the view that it is a fit case for interference in an effort to restore the judgment and decree granted by the trial court in favour of the plaintiffs. I find any amount of force in the grounds of appeal and I am inclined to allow the appeal by reversing the judgment of the 1st appellate court.

17. In the result, the appeal is allowed by setting aside the judgment and decree of the 1st appellate court in A.S.No. 89 of 1988 and confirming the judgment and decree of the trial court in O.S.No. 132 of 1984. But in view of the circumstances of the case, each party to bear its own costs.