

Heera Chand Vs Ommi Setti (died) and Ommi Venkatalakshmi

Court: Andhra Pradesh High Court

Date of Decision: April 1, 2011

Acts Referred: Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 " Section 2, 9

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 " Rule 19, 19(3), 9(3)

Civil Procedure Code, 1908 (CPC) " Section 151

Constitution of India, 1950 " Article 227

Hon'ble Judges: B. Chandra Kumar, J

Bench: Single Bench

Advocate: M. Radhakrishna, for the Appellant; T.V. Sri Devi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B. Chandra Kumar, J.

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order, dated

12.10.2006, made in I.A. No. 9 of 2006, in R.C.C. No. 5 of 1997, passed by the Principal Junior Civil Judge, Anakapalle, where under and

whereby, the petition, u/s 151 of the Code of Civil Procedure, 1908 (for short, "Code of Civil Procedure"), filed by the second Respondent

herein, seeking certain amendments in the original petition was allowed.

2. The Petitioner herein is the Respondent and the Respondents herein are the Petitioners in R.C.C. No. 5 of 1997. For the sake of convenience,

the parties will be referred to herein as they are arrayed in R.C.C. No. 5 of 1997.

3. The brief facts of the case are as follows:

The Petitioners, i.e., Ommisetti and Ommisetti Venkata Lakshmi, filed R.C.C. No. 5 of 1997 seeking the eviction of the Respondent from the

petition schedule premises. According to the second Petitioner, the first Petitioner executed a Will on 05.09.2002 bequeathing his half share to the

second Petitioner. The second Petitioner is the daughter-in-law of the first Petitioner. Subsequently, on 13.01.2003, during the pendency of the

proceedings, the first Petitioner died. The claim of the second Petitioner is that she succeeded to the half share of the first Petitioner and she

became the absolute owner of the entire petition schedule property. It has to be seen that she is already on record as second Petitioner. Now she

is seeking an amendment in Para III (h) of the petition to add as follows:

During the pendency of petition, 1st Petitioner executed the Will dated 5.9.02 in favour of 2nd Petitioner bequeathing his half share in the petition

schedule property and subsequently on 13.1.03 the 1st Petitioner expired at Thummapala in Anakapalli Mandal and on the death of the 1st

Petitioner during the pendency of suit, the 2nd Petitioner succeeded the half share in the petition schedule property of deceased 1st Petitioner. The

2nd Petitioner became the absolute owner of the entire petition schedule property and entitled for the entire suit claim against the Respondent.

4. The tenant filed a counter contending that the first Petitioner died on 13.01.2003 and there is a delay in filing an application for seeking

amendment and that the execution of the Will by the first Petitioner in favour of the second Petitioner is false and the Will is forged and brought into

existence. It was argued before the learned Rent Controller that an application for impleading the legal representatives of the deceased already

ought to have been filed within 30 days from the date of the death of the deceased. The learned Rent Controller, after referring to Section 9 of the

Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short, "the Act"), and to the decision of this Court reported in New

Matching Centre v. Bankatlal died 2006 (3) APLJ 14 SN wherein it was held that the entire procedure prescribed in CPC per say, cannot be

applied to the proceedings under the provisions of the Act. The learned Rent Controller held that as the second Petitioner is already on record, the

question of abatement does not arise. It was also contended that no order was passed through a proceeding in respect of the first Petitioner up to

the holding that no prejudice will be caused to the Respondent if the amendment is permitted. The learned Rent Controller allowed the petition.

Challenging the same, the present revision has been filed.

5. The main contention of Sri M. Radha Krishna, learned Counsel for the Petitioner is relying on Sub-Rule 3 of Rule 19 of the Andhra Pradesh

Buildings (Lease, Rent & Eviction) Control Rules, 1961 (for short, "the Rules") submitted that where a question arises as to whether any person is

or is not legal representative of a deceased, such question shall be referred to a Civil Court for determination. He has also relied on the decisions

reported in Rajendra Shanker Choudhary v. Sham Mohan Srivastava 1997 (2) AWR 727 and also Syed Ahmed Mohiuddin (died) per L.R. Vs.

Dr. Wilfred De'Souza,

6. The only point that arises for consideration is whether the impugned order is illegal, improper and liable to be set aside.

7. The admitted facts are that the first Petitioner is the father-in-law of the second Petitioner and both of them together filed R.C.C. No. 5 of 1997

seeking the eviction of the Respondent/tenant. This it self shows that both of them, claiming to be the co-owners, are having shares in the property.

Thus, the first Petitioner who is no more seems to have admitted in his pleadings itself that the second Petitioner has a share in the petition schedule

property. It may be useful to refer to the definition of "landlord". The definition of "landlord" is wide which is as follows:

Section 2(vi) "Landlord" means the owner of a building and includes a person who is receiving or is entitled to receive the rent of a building,

whether on his own account or on behalf of another person or on behalf of himself and others or as an agent, trustee, executor, administrator,

receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let to a tenant.

Thus, it is clear that the definition of "landlord" given above refers not only to the owner of the building, but also includes a person who is receiving

or entitled to receive the rent of a building. Thus, an agent, trustee, executor, administrator, receiver or any other person who receives the rent or

entitled to receive the rent have to be treated as a "landlord". It is true that a Rent Controller is not entitled to decide the disputed questions relating

to a title when there is a genuine dispute with regard to the title.

8. Now the question is whether a tenant who, under any circumstances, cannot be treated to be the person having any interest in the title of a

property can simply deny the title of a person who claims to have succeeded to the property and can say that there is a genuine dispute and

thereby stop paying rents.

9. I am of the considered opinion that the genuine dispute with regard to the title arises when there is a dispute among the legal heirs of the

deceased landlord or when the Will said to have been executed by the landlord is disputed by any one of the persons who would get a share in the

property or when the alleged Will is not believed, the property devolves on such a person. He must have some semblance of right in the property.

A dispute can be raised by any person who would get the property by virtue of succession or as a sharer of such property. That means when there

is a dispute between the person claiming right to the property and where it appears that there is some genuine dispute among those persons, then it

can be said that there is a dispute with regard to the title of the person who is claiming a right to the property. In this case, it is not the case of the

tenant that any one of the legal heirs of the first Petitioner has claimed any right to the property. When there is no rival claim by any one of the legal

heirs or the family members of the first Petitioner, in my humble view, a tenant cannot say that there is a genuine dispute in the claim of the second

Petitioner. Even if he disputes that the second Petitioner's claim of acquiring any right by virtue of the Will, the Rent Controller has to decide

whether such denial is bona fide or not. The Rent Controller may not decide the disputed issue of title, but under the provisions of the Act, the Rent

Controller certainly, is empowered to decide whether the denial of the title of the landlord or a person claiming to be the landlord by the tenant is

genuine or not.

10. As far as the decisions relied by the learned Counsel for the Petitioners are concerned, in case of Syed Ahmed Mohiuddin (Died) Per L.R."s

case (supra), it appears that the facts are some what different. In that case, tenant died. Then a petition was filed by a person claiming to be his

nephew on the ground that he was assisting the deceased in his business and after the death of the original tenant, he was running the business in the

said mulgi. Now it has to be seen that in that case, the person who claims to have stepped into the shoes of the tenant or who was claiming right

through the deceased tenant was neither a son nor a class-1 legal heir nor a person who was entitled to be succeeded to the property of the

deceased tenant in that case. The definition of "tenant" is as follows:

Section 2(ix) "Tenant" means any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any

son or daughter, of a deceased tenant who had been living with the tenant in the building as a member of tenant's family up to the death of the

tenant and a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation

of a building, by its tenant or a person to whom the collection of rents or fees in a public market, cart-stand or slaughter-house or of rents for

shops has been framed out or leased by a local authority.

Thus, it is clear that in that case, the person who was claiming as a tenant was not the surviving spouse or son or daughter of the original tenant.

Since the person claimed as a nephew and that he was assisting the deceased in his business require a decision by a Civil Court as to whether he

succeed to original tenant or not. The observations in that case appears to be not applicable to the facts of the present case. It is true that when

there is a genuine dispute, a decision has to be given by a Civil Court declaring the title of a party.

11. Coming to the other decision relied by the learned Counsel for the Petitioner in Rajendra Shanker Choudhary (supra), in that case, there were

two rival claimants. One application was filed by the Petitioner in C.R.P. No. 1338 of 1990 seeking to bring him on record as a legal

representative of the deceased Appellant in R.A. No. 165 of 1988. His case was that on the death of the deceased landlord, he is the nearest legal

heir entitled to come on record as a legal representative of the deceased landlord. The Respondent filed another I.A. No. 135 of 1989 claiming

that the deceased landlord had left a Will, dated 17.01.1972, bequeathing some of the properties including the suit premises in his favour. Thus,

there were two rival claims. One was claiming under a will and another was claiming as a nearest legal heir of the deceased landlord in that case. In

such circumstances, while interpreting Sub-Rule 3 of Rule 9 of the Rules, this Court held that the question shall be referred to a Civil Court for

determination.

12. As discussed above, there are no rival claims in this case. None of the legal heirs of the first Petitioner disputed the claim of the second

Petitioner and when there are no rival claims, I am of the view that the decision cited by the learned Counsel for the Petitioners can be distinguished

on facts and not applicable to the facts of the present case.

13. Now referring to Rule 19 of the Rules, it is submitted that where a question arises as to whether any person is or is not legal representative of

the deceased person, such question shall be referred to a Civil Court for determination.

14. As discussed above, since originally, the eviction petition was filed by the Petitioner's father-in-law and Petitioner claiming to be the owners of

the petition schedule property and when no dispute is raised by any other person except the tenant, the only point that remains to be decided is

whether the denial of the title of the second Petitioner by the tenant is bona fide or not. When there is no genuine dispute, the above said rule

appears to be not applicable to the facts of the present case. More over, it has to be seen that the second Petitioner is only seeking an amendment

to the petition filed by them seeking eviction. Even after the amendment, the Respondent may file additional counter and it is for the Rent Controller

to decide the issue. At the stage of amendment, I am of the view that the claim of the second Petitioner cannot be denied. I do not see any

irregularity or illegality in the order passed by the lower Court.

15. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.