

**(1997) 09 AP CK 0009**

**Andhra Pradesh High Court**

**Case No:** CRP No. 1431 of 1997

Madhavan Nayar

APPELLANT

Vs

Bathina Hanumantha Rao

RESPONDENT

**Date of Decision:** Sept. 17, 1997

**Acts Referred:**

- Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 10(2), 10(3), 20
- Andhra Pradesh Court Fees and Suits Valuation Act, 1956 - Section 50, 51
- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 10, 115, 14(3), 21(2)

**Citation:** (1999) 5 ALD 133(1) : (1999) 5 ALD 133 : (1999) 4 ALT 60

**Hon'ble Judges:** B.K. Somasekhara, J

**Bench:** Single Bench

**Advocate:** Mr. Ravi Shankar, Jandhyala, for the Appellant; Mr. S.N. Prasad, for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

1. The judgment of the learned Principal Subordinate Judge, Ongole in RCA No.13/94, dated 3-3-1997 is in challenge. The petitioner is the respondent in the appeal. The respondent had filed an appeal against the petitioner u/s 20 of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short "the Act") before the learned Rent Controller-cum-Principal District Munsif, Ongole in RCC No.33/88 on the ground of wilful default in payment of rent and bona fide requirement of premises for personal occupation under Sections 10(2)(i) and 3(c) of the Act which was resisted by the petitioner. The respondent examined himself as PW1 and the petitioner was examined as RW1 and Exs.A1 to A18 were marked. After hearing both the sides, the learned Rent Controller accepted both the grounds for eviction set up by the respondent. But he came to the conclusion that since the rate of rent pleaded by the respondent was Rs.1,500/- per mensem, by virtue of G.O. Ms. No.636, dated

29-12-1983 he had no jurisdiction to try the matter and accordingly dismissed the petition. The matter was taken up in appeal by the aggrieved landlord before the learned Subordinate Judge, Ongole in RCA No.13/94 wherein while confirming the findings on the grounds of eviction, the finding in regard to jurisdiction was set aside on the ground that the landlord, the present respondent gives up his plea of the rent being Rs.1,500/-per mensem and instead agreed it for Rs.900/-per mensem. Aggrieved by this, the revision is filed.

2. Mr. Ravi Shankar, Jandhyala, the learned Advocate for the petitioner has contended that the learned Subordinate Judge exceeded his powers and jurisdiction in appeal to act upon the plea of the present respondent in fixing the rent as against the definite case which cannot be before the learned Rent Controller, the rent being at Rs.1,500/- which fixed the jurisdiction of the Tribunal, and not what is set before the appellate Court. It is also his contention that the finding on the grounds of eviction by the learned Rent Controller and also as confirmed by the learned Subordinate Judge are not correct. As against this, the learned Advocate, Mr. Prasad appearing for the respondent has contended that in the first place, no objection was raised regarding the pecuniary jurisdiction of the learned Rent Controller to try the case and secondly, when once the plea was taken that the rate of rent was only Rs.900/- and not Rs.1,500/-, the learned Subordinate Judge was right in accepting such a plea to deal with the matter. It is also his contention that in view of the consistent concurrent findings of the Courts below regarding the grounds of eviction, it is not proper for a Court of revision u/s 115 CPC to deal with the questions of facts. As a whole, he is to support the impugned judgment of the learned Subordinate Judge in all respects.

3. The method adopted by the learned Subordinate Judge is not only illegal but perverse. There is a total bargaining of the matter in relation to the question of jurisdiction. The learned Subordinate Judge has acted in utter ignorance of the fundamental principles of law and has yielded to the bargaining pressure on the part of the appellant in the case. It cannot be supported by filing a memo. The law in relation to determination of jurisdiction is well known. Both the Court fee and jurisdiction will have to be determined by the Court. Precedents are plenty with regard to implication of Section 50 of the A.P. Court Fees and Suits Valuation Act, 1956. One of them is Ghulam Din v. Mohd. Syed, AIR 1973 J & K 56. Whether or not such a ground is taken, the Court will also examine it before admitting it and see whether the Court has got pecuniary jurisdiction. In such a situation, there will not be any plea of the other side to determine the jurisdiction. It is also well known that the valuation of a proceeding both for the purpose of Court fee and jurisdiction are same. As rightly contended by Mr. Ravi Shankar, Jandhyala, the learned Advocate, the averments in the plaint petition by the present respondent made it emphatic that the rate of rent was Rs.1,500/- per mensem and the cause of action was also based upon the same. It is on such averments, the question of jurisdiction had to be determined. The respondent was certain that the rate of rent was Rs.1,500/- per

mensem from the very date by virtue of the agreement which the petitioner did not challenge in the appellate Court. When the learned Rent Controller disposed of the question of jurisdiction against the present respondent, the question before the learned Subordinate Judge was whether such a finding was justified and not whether the respondent appellant before him was modifying his stand as he desired. Possibly, the litigants may tailor their pleadings on these grounds to suit their convenience and seek success. If the Court accepts such a thing, it will be nothing but a bargaining for the disposal of the matter. The worst was possibly, for some reasons, some rent had been wrongly mentioned, the parties can always seek amendment in accordance with law and not merely making a submission upon which Courts should act. If the rent was Rs.1,500/- per mensem as per the averments of the present respondent in the petition before the learned Rent Controller, G.O.Ms. No.636, dated 29-12-1983 clearly took away the pecuniary jurisdiction of the learned Rent Controller to try the matter. In such a situation, if the finding of the learned Rent Controller was judged on such a ground, the learned Subordinate Judge had no option but to accept it. But there were other serious questions to be examined whether such a ground was really raised or not. Admittedly, no such ground was raised. The question of pecuniary jurisdiction including the valuation of suits has to be determined in the light of Section 51 of the A.P. Court Fees and Suits Valuation Act, 1956. But ultimately, it is the prejudice which is going to be caused to a party which will determine the question of pecuniary jurisdiction, objected or not in a particular case. Particularly, when such an objection was not at all raised and when there is no finding that prejudice shall be caused to the present petitioner, the learned Subordinate Judge had no business to interfere with such a finding normally. It was fit case to set aside the finding when it was determined without such an objection having been raised for disposal according to law.

4. The learned Rent Controller has committed one more serious legal error by touching the question of jurisdiction when the grounds of eviction were dealt with first and then the question of jurisdiction was dealt with. Presuming that such an objection had been raised by the present petitioner as a tenant, normally there would have been an issue or point for determination to be tried as a preliminary question following the principle from Order 14(3) of CPC. Without such a legal procedure, the learned Rent Controller inspired by his own thinking took up the question of jurisdiction and decided the matter which was set aside by the learned Subordinate Judge without due regard to procedure of law. One more legal infirmity apparent in the order of the learned Rent Controller is that when he came to the conclusion that there was no pecuniary jurisdiction for him to try the matter, he ought to have returned the plaint petition for presenting before the proper Court by virtue of Order 7, Rule 10 CPC. Instead the petition was dismissed under the circumstances.

5. Section 21(2) of CPC makes it obligatory and mandatory that objection as to pecuniary jurisdiction should be taken in the Court of the first instance to otherwise they shall not be allowed to be taken in the appellate Court. Such an objection should also be taken up before the settlement officials. Unless there is failure of justice, it cannot be cured.

6. In the considered opinion of this Court, both of them transgressed their powers and jurisdiction in dealing with the matter in accordance with the fundamental judicial principles and therefore, it is a fit case to exercise the powers of this Court u/s 115 CPC to set at naught both the orders and remit back the matter to the learned Rent Controller-cum-Principal District Munsif, Ongole for disposal according to law where the parties will take appropriate steps, if they are so advised, so that the Court can dispose of the matter in accordance with law.

7. The Revision Petition is allowed, as neither the order of the learned Rent Controller nor the judgment of the learned Subordinate Judge, Ongole is supportable. The order of the learned Rent Controller and also the judgment of the learned Subordinate Judge, Ongole are set aside and the matter is remitted back to the learned Rent Controller-Cum-Principal District Munsif, Ongole for disposal according to law and in the light of the observations made above after giving opportunity to both the sides by either producing any material or to argue the matter. No costs.