

Kareem Hussain (died) per L.Rs. Vs Veeranki Rama Krishna Prasad (died) per L.Rs.

Court: Andhra Pradesh High Court

Date of Decision: Dec. 29, 2006

Acts Referred: Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 " Section 10(2), 10(3)
Transfer of Property Act, 1882 " Section 53A, 54

Citation: (2007) 2 ALD 808 : (2007) 2 ALT 457

Hon'ble Judges: V. Eswaraiyah, J

Bench: Single Bench

Advocate: P.R. Prasad, for the Appellant; B. Kamalakara Rao, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Eswaraiyah, J.

This civil revision petition is directed against the order dated 05-08-2004 passed in C.M.A.No.21 of 2000 by the

Additional Senior Civil Judge (Fast Track Court), Gudivada confirming the order dated 15-09-2000 passed in R.C.C. No. 1 of 1999 by the Rent

Controller - cum - Junior Civil Judge, Gannavaram.

2. The petitioners herein are the tenants and the respondents are the landlords in respect of the premises bearing No. 11-100-1, situated at

Vuyyuru, Krishna District. The first respondent herein filed eviction petition in R.C.C.No.1 of 1999 on the file of the Rent Controller-cum-Principal

Junior Civil Judge, Gannavaram against the first petitioner herein seeking his eviction from the aforesaid premises on the grounds of wilful default

and personal occupation under Sections 10(2)(i) and 10(3)(a)(i) of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 (for

short "the Act"). The learned Rent Controller, by order dated 15-09-2000, allowed the eviction petition on both the grounds. Aggrieved by the

same, the first petitioner, Kareem Hussain, preferred an appeal in C.M.A.No.21 of 2000 and the Rent Appellate Authority, by order dated 05-

08-2004, dismissed the appeal upholding both the grounds. During the pendency of the appeal, the original tenant and original landlord died and

their legal representatives were brought on record.

3. For the purpose of convenience the petitioner herein are referred to as tenants and the respondents are referred to as landlords.

4. It is the case of the landlord, Veeranki RamaKrishna Prasad, that he purchased the suit schedule premises under Ex.A-1 sale deed dated 07-11

-1996 for a consideration of Rs. 4,10,000/- from one Nancharamma and since then he became the owner of the said property. It is stated that

before the suit schedule property was purchased, the respondent was one of the tenants in respect of the property covered by Ex.A-1 sale deed

and there were two more tenants. The landlord being a Doctor wanted to construct his own Nursing Home and, therefore, requested the tenants to

vacate the said premises and the other two tenants vacated, but the first respondent herein, who was a tenant on payment of monthly rent of Rs.

600/- did not vacate. The other two portions were demolished after the tenants vacated the portions occupied by them. It is stated that the tenant

is a statutory tenant paying the monthly rent at Rs. 600/- per month and after purchase of the said property, he is entitled to receive the rents, he

being the landlord, but the tenant committed willful default in payment of the rents ever since the sale in his favour till the filing of the eviction

petition. It is stated that the said premises is required for his personal occupation and, therefore, the tenant is liable to be evicted. The eviction

petition was filed on 19-08-1999.

5. A counter has been filed by the tenant on 30-03-2000 disputing all the averments made in the eviction petition with regard to the purchase of the

said land by the landlord and the payment of rent etc. and stated that there is no relationship between the landlord and the tenant. It is stated that,

in fact, he is the absolute owner of the said premises as he has purchased the said property for valuable consideration of Rs. 50,000/- from the

original owner K. Venkata Subbamma on 25-09-1985 and paid the entire sale consideration to her and he was demanding her to execute the sale

deed, but she was postponing to perform her part of the contract and ultimately she died on 14-03-1988 without executing the sale deed. As the

said Venkata Subbamma was issueless, the tenant kept quiet. In 1996 the vendor of the landlord, namely Mamidi Nancharamma and Mamidi

Venkateswara Rao approached him stating that the said Nancharamma is the adopted daughter of Venkata Subbamma and demanded him to

vacate the petition schedule premises. Then he showed them the agreement of sale in his favour and refused to vacate the same. Thereafter, he

demanding the said Nancharamma to execute a registered sale deed in his favour as she is claimed to be the adopted daughter of Venkata

Subbamma. The said Nancharamma did not look after the Venkata Subbamma during her last days. The said Nancharamma and Venkateshwara

Rao along with landlord tried to evict him from the suit schedule property by illegal means and, therefore, he gave a complaint before the police

and also issued a notice dated 02-11-1996 through his counsel to the said Nancharamma and Venkateshwara Rao. In spite of it, they made an

attempt to demolish the said portion and, therefore, he filed a suit for specific performance of agreement of sale dated 29-09-1985 in O.S. No.

139 of 1996 on the file of the Senior Civil Judge, Gudivada and also obtained an interim injunction on 07-11-1996 in I.A. No. 1144 of 1996 not

to interfere with his peaceful possession and enjoyment. The said suits is still pending. It is stated that the said Nancharamma has no right or title to

execute the sale deed in favour of the landlord and there was no relationship between Venkata Subbamma and Nancharamma, as she is not at all

the adopted daughter of Venkata Subbamma; therefore, Nancharamma was not at all having any title entitling her to execute the sale deed in

favour of the landlord and no title can be passed on the landlord. In those circumstances, the tenant need not pay any rents to the landlord, as he is

the absolute owner of the suit schedule property.

6. On the aforesaid pleadings, the Rent Controller framed the following issues;

1. Whether there is any relationship between the petitioner and the respondent as that of landlord and tenant?

2. Whether the respondent is liable to pay the rents to the petitioner in view of the alleged transaction under a contract for sale of the scheduled

premises and what is the effect of the said contract for sale alleged to have been executed by the original owner of the property by name Kuralla

Venkata Subbamma?

3. Whether the petitioner is entitled to have the respondent evicted on the grounds of willful default in paying the rents and requiring the premises

for his personal occupation?

4. To what relief?

7. The landlord was examined as P.W.1 and the son of Nancharamma namely M. Venkateshwara Rao was examined as P.W.2 and Ex.A-1,

Registered Sale Deed dated 07-11-1996 was marked. The tenant was examined as R.W.1 and Exs.R-1 and R-2 were marked.

8. The landlord, examined as P.W.1, stated that he purchased the petition schedule property under Ex.A-1 Registered Sale Deed dated 07-11-

1996 and the said property originally belonged to Venkata Subbamma, who executed a will in favour of Nancharamma bequeathing the said

property and after death of Venkata Subbamma, Nancharamma became the owner. It is stated that by the date of his purchase under Ex.A-1,

there were three tenants in the property and the respondent is one of tenants and that he informed all the tenants with regard to the purchase of the

property and requested them to vacate the said premises, as he wanted to construct a Nursing Home. The tenant was paying Rs. 600/- per month

towards rent for the said premises. But, after the purchase, he neither paid the rent nor vacated the premises. It is stated that the tenant did not pay

any rents from the date of his purchase and that he did not give any registered notice demanding the tenant to vacate the premises and also to pay

the rents. It is further stated that he did not know whether the tenant purchased the said property from Venkata Subbamma under a contract of

sale dated 25-09-1985 with possession of the same. The tenant filed a suit and obtained ex parte injunction against three persons including his

father, who was a party to the suit, but not against him. The suggestions, that Ex.A-1 document was brought into existence by his father in collusion

with Nancharamma and her son Venkateswara Rao and that he did not get any rights under Ex.A-1 registered sale deed, were denied. There was

no relationship of landlord and tenant between the parties and the eviction petition is maintainable. There is no documentary proof that the tenant

promised to pay Rs. 600/- per month as rent to the suit schedule property. It is stated that he alone was paying the taxes, but no proof of payment

of tax was filed into Court.

9. The son of Nancharamma, namely M. Venkateswara Rao, examined as P.W.2, stated that the said property originally belonged to Venkata

Subbamma, who executed a registered will in favour of his mother in the year 1971 and, thereafter, Venkata Subbamma died on 14-03-1988 and

after her death, his mother, Nancharamma came into possession of the said property. It is stated that his mother Nancharamma also died in the

year 1999. During the lifetime of Venkata Subbamma alone, the said property was let out to tenants. Apart from the tenant herein, there were two

more tenants namely Koteswara Rao and Jagan Mohan Rao. After the death of Venkata Subbamma, his mother Nancharamma sold the said

property in favour of the landlord, which was in a dilapidated condition, under Ex.A-1 sale deed dated 07-11-1996 for a sale consideration of Rs.

4,10,000/- which was paid before the Sub Registrar and his mother Nancharamma received the same. It is stated that before the sale, they had

informed the tenant about the proposal to sell the property and requested him to vacate, for which he agreed. But the tenant herein did not vacate

through the other two tenants vacated. The tenant was paying the rents to his mother, who came into possession of the said property after the

death of Venkata Subbamma. By the date of Ex.A-1, the rent payable by the tenant was Rs. 500/- per month.

In the cross-examination by the tenant, P.W.2 stated that Ex.A-1 sale deed was registered on the same date of its execution. The attester signed

before the Sub-Registrar and he identified the signature of his mother. The contention of the tenant that he has purchased the said property from

Venkata Subbamma under an agreement of sale dated 25-09-1985 for a sum of Rs. 50,000/- is not correct. Ex.A-1 is true and valid document

and his mother was the original owner having right title over the suit property. It is stated that the tenant obtained interim ex parte injunction in I.A.

No. 1144 of 1996 in O.S.No.139 of 1996 against them.

10. The tenant, examined as R.W.1, stated that he purchased the said property for a sum of Rs. 50,000/- from Venkata Subbamma under a

contract of sale followed by delivery of possession, the original of which was filed in O.S.No. 139 of 1996 on the file of Senior Civil Judge,

Gudivada. Venkata Subbamma died in 1988. In view of the said agreement of sale, he was continuing in possession as a rightful owner from the

date of purchase under the contract of sale. He tried to get the regular sale deed from Venkata Subbamma on many occasions. But, Venkata

Subbamma postponed the same till her death and, therefore, he could not get the regular sale deed. P.Ws.1 and 2 and Nancharamma came to him

before he filed the suit and asked him to vacate the premises and then he explained them about the contract of sale and thereafter, he filed the suit

for specific performance of agreement of sale. Later, he came to know that P.W.1 purchased the said property under a registered sale deed for a

sum of Rs. 4,10,000/-. But, P.W.1 never asked him to vacate the said premises and he never promised to vacate or pay the rents in respect of the

said premises. It is stated that as he purchased the said property the said property, he need not pay the rents to P.W. 1, and that he came into

possession of the said property as a tenant and thereafter he entered into an agreement of sale to purchase the said property. He did not give any

registered notice to Venkata Subbamma demanding her to execute the registered sale deed basing on the agreement of sale said to have been

executed by her. By the date of contract of sale, the rent being paid by him was only Rs. 150/- per month. It is stated that one Koteswara Rao

was also a tenant along with him in a different portion. Prior to the filing of the suit, he asked Nancharamma to execute a registered sale deed in

respect of the portion of the property purchased by him under an agreement of sale, but she postponed the same on some pretext or other. It is

stated that he did not take any steps to implead the landlord, P.W.1, as party to O.S. No. 139 of 1996 filed by him even after filing the eviction

petition. Except the portion occupied by him, remaining portions were demolished after P.W.1 purchases the same under Ex.A-1 sale deed.

11. The question that arises for consideration is whether the title set up by the landlord was established, if so, whether the tenant is liable to be

evicted for wilful default in payment of rents.

12. The aforesaid pleadings and oral and documentary evidence go to show that Venkata Subbamma was the original owner and the tenant has

taken the said portion on rent from her and she died in 1988. Though the tenant contended that after the death of Venkata Subbamma, he did not

pay the rents, the son of Nancharamma, P.W.2, who got the said property under the will said to have been executed by Venkata Subbamma

stated that after the death of Venkata Subbamma, his mother Nancharamma became the owner of the said property and the tenant used to pay the

rents to her mother. Of course, there is no documentary evidence in support of the said contentions as either party filed no receipts. No doubt, the

learned Rent Controller cannot decide the disputed questions of facts with regard to the title and the proceedings under the Act are summary in

nature and the maximum that the rent Controller can do is to prima facie see whether the denial of title is bona fide and whether the relationship of

the landlord and the tenant has been established or not.

13. Mr. P.R. Prasad, learned Counsel for the tenant submits that pursuant to the agreement of sale entered into by the tenant and the original

landlady Venkata Subbamma, the tenant paid the entire sale consideration of Rs. 50,000/- in 1988 and thus he became the owner though formal

sale deed was not executed and, therefore, he is entitled to protect his right of possession over the said property u/s 53-A of the Transfer of

Property Act. Admittedly, the suit filed by the tenant is still pending on the file of Senior Civil Judge, Gudivada. As the Senior Civil Judge being the

appellate authority, this matter can as well be remanded to the Senior Civil Judge so as to enable the appellate authority to decide the suit for

specific performance and in the event the tenant succeeds in the suit, he need not vacate and if he fails in the said suit, then he should vacate and

handover the vacant possession of the same in favour of the landlord.

14. The agreement of sale was executed on 25-09-1985 and the said Venkata Subbamma died on 14-11-1988. As per the evidence of P.W.2,

Venkata Subbamma executed a registered will in the year 1971 and after her death in the year 1988, Nancharamma became the owner of the said

property and, therefore, she was having right and title to sell the said property and accordingly Ex.A-1 registered sale deed was executed by the

said Nancharamma after receiving the entire sale consideration of Rs. 4,10,000/- before the Sub Registrar.

15. A perusal of Ex.A-1 sale deed goes to show that the said Venkata Subbamma executed a registered will dated 15-12-1971 registered as

Document No. 44 of 1971 Book No. 3 Volume 27 at pages 43 and 44 of the Sub Registrar. Admittedly, the tenant has not at all issued any notice

calling upon the original owner Venkata Subbamma or Nancharamma, who obtained the said property under registered will executed by the

original owner. u/s 53-A of the Transfer of Property Act, no doubt, the tenant can take the defence for retention of his possession provided he has

performed his part of the entire contract. But, u/s 54 of the act, once the sale deed is executed, the contract of sale of the said property does not

create any interest or charge on such property. In the instant case, the tenant has not at all filed the agreement of sale and no documentary evidence

has been filed. However, if he succeeds in the suit for specific performance, the summary proceedings under the Act are only subject to the result

of the suit in the said specific performance.

16. I am of the opinion that, in view of the aforesaid facts and circumstances of the case, when there is a registered will executed by original owner

in favour of Nancharamma and Nancharamma executed a registered sale deed Ex.A-1 in favour of the landlord for a valid consideration, it cannot

be said that the title is not at all passed on to the landlord. Of course, the said title will be subject to the result of the suit for specific performance

filed by the tenant. Therefore, I am of the opinion that both the Courts below rightly held that the relationship of the landlord and tenant exists more

so when the son of the vendor of the landlord, examined as P.W.2, stated that the tenant used to pay the rents to his mother prior to the execution

of the sale deed.

17. In view of the aforesaid facts and circumstances, I am of the opinion that the relationship of the landlord and tenant exists. Admittedly no rents

have been paid from the date of purchase of the property under Ex.A-1 sale deed till the date of filing of the eviction petition and the payment of

rents subsequent to the filing of eviction petition pursuant to the directions of the Rent Controller will not absolve the wilful default committed by the

tenant and accordingly the aforesaid points are held in favour of the landlord.

Having regard to the facts and circumstances of the case, the civil revision petition is accordingly dismissed. However, as the suit for specific

performance is still pending and as it is stated that there is a likelihood of early disposal of the suit, the tenant is granted four months time to vacate

and handover the vacant possession of the premises in question, subject to the condition that the tenant deposits the entire arrears of the rent by the

end of January 2007 and also files an undertaking, before the Rent Controller, to that effect that he has already deposited the entire arrears of rent

and will continue to deposit the rents by 10th of every succeeding month and will vacate and handover the vacant possession of the same by 30-

04-2007.