G. Kesava Rao Vs Manohar Varu

Court: Andhra Pradesh High Court

Date of Decision: Sept. 26, 2001

Acts Referred: Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 â€" Section 10(2)(1), 10(3), 22, 25
Civil Procedure Code, 1908 (CPC) â€" Section 115, 151

Citation: (2002) 1 ALT 73

Hon'ble Judges: B.S.A. Swamy, J

Bench: Single Bench

Advocate: T. Veerabhadrayya, for the Appellant; T.V. Rajeevan, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B.S.A. Swamy, J.
The question that falls for consideration in this revision petition is whether the concurrent findings recorded by the

learned IV Additional Rent Controller, Hyderabad in R.C.No. 226 of 1990 and the learned Chief Judge, City Small Causes Court, Hyderabad in

R.A.No. 288 of 1993 are perverse and not based upon the evidence available on record and if so whether this Court, in exercise of its revisional

power u/s 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short ""the Act"") can interfere with their orders.

2. The factual background of this case is that the petitioner-landlord originally hails from Thakkellapadu village in Krishna District. On appointment

as a Teacher, came to Khammam District and he retired from service in the year 1977. During his service, he not only constructed a house at

Khammam but also purchased the suit schedule building at Hyderabad. As he was residing at Khammam due to his employment, he let out the suit

schedule building to the respondent. It has also come to light that the tenancy started with a rent of Rs.70/- per month and the rent is being

enhanced from time to time. On the date of filing of the eviction petition, R.C.No. 226 of 1990, the respondent-tenant was paying rent of Rs.

250/- per month and the rents were being collected by his ''sambandhi'' who stays at Hyderabad and who was examined as P.W.2. On 12-12-

1989 the petitioner gave notice to the respondent that the suit schedule building was required for his personal occupation, and requested the

respondent to vacate the suit schedule building and hand over the vacant possession thereof to him. The respondent having received the notice paid

the rent of Rs.275/- for the month of December, 1989 to P.W.2. For the month of January 1990, P.W.2 refused to collect the rent on the ground

that the petitioner advised him not to collect enhanced rent as he was going to file eviction petition. At this stage, the respondent sent a reply notice

on 19-3-1990 stating that the suit schedule building was not required for the personal occupation of the petitioner and that such a notice was given

for enhancing the rent. Thereafter the petitioner filed eviction petition, R.C.No. 226 of 1990, on the file of the learned IV Additional Rent

Controller, Hyderabad u/s 10(2) (1) and Section 10(3)(a)(i)(a) of the Act both on the grounds of wilful default and personal occupation. On behalf

of the petitioner, the petitioner and his "sambandhi" were examined as P.Ws.1 and 2 and Exs.P-1 to P-25 were marked. The respondent got

himself examined as R.W.1 and marked Exs.R-1 to 13. The learned IV Additional Rent Controller, Hyderabad framed the following issues:

(1) Whether the respondent committed wilful default in payment of rent for the months of January and February 1990 and

(2) Whether the petitioner bona fide required the suit schedule building for his personal occupation.

The learned IV Additional Rent Controller, by his order, dated 2-7-1993, dismissed the eviction petition stating that the petitioner did not prove

the allegations levelled against the respondent. Aggrieved by the said order and decree, the petitioner carried the matter in appeal, R.A.No. 288 of

1993 to the learned Chief Judge, City Small Causes Court, Hyderabad. The appeal also met with the same fate. Hence this civil revision petition.

3. With regard to the wilful default, the learned Counsel for petitioner submits that he is not pressing the issue. As far as the bona fide requirement

is concerned he argues that the finding recorded by the Chief Judge, City Small Causes Court, Hyderabad is perverse and based on mere surmises

and conjectures. As such the order is liable to be set aside.

4. Sri T.V. Rajeevan, learned Counsel for the respondent, cited number of decisions to show that though the power of revision under the Act

conferred is on the higher pedestal, yet the High Court being a revisional Court under the Act is not expected to reappraise the evidence as Court

of first appeal or second appeal by placing reliance on the decision in Rajbir Kaur and Another Vs. S. Chokesiri and Co., wherein their Lordships

of the Supreme Court, while considering the scope of the revisional powers of the High Court, held at paragraph 16 of their Judgment:

The scope of the revisional jurisdiction depends on the language of the statute conferring the revisional jurisdiction. Revisional jurisdiction is only a

part of the appellate jurisdiction and cannot be equated with that of a full-fledged appeal. Though the revisional power - depending upon the

language of the provision - might be wider than revisional power u/s 151 (or 115?) of the Code of Civil Procedure, yet, a revisional Court is not

second or first appeal (sic. appellate Court).

When the findings of fact recorded by the Courts below are supportable on the evidence on record, the revisional Court must, indeed, be reluctant

to embark upon an independent reassessment of the evidence and to supplant a conclusion of its own, so long as the evidence on record admitted

and supported the one - reached by the Courts below. With respect to the High Court, we are afraid the exercise made by it in its revisional

jurisdiction incurs the criticism that the concurrent finding of fact of the Courts below could not be dealt and supplanted by a different finding

arrived at on an independent reassessment of evidence as was done in this case. We think in the circumstances, we should agree with Sri Sanghi

that the concurrent finding as to exclusive possession of M/s. Kwality Ice-Cream was not amenable to reversal in revision. Contentions (a) and (b),

in our opinion, are well taken and would require to be held in appellants'' favour.

To that effect, Sri Rajeevan, learned Counsel for the respondent, cited the decisions in Shiv Lal Vs. Sat Parkash and Another, Ashok Kumar and

Ors. v. Sitaram 2001 (3) SC 488 N. Ananda Rao Vs. P. Naga Anjeswara Rao, and P. Ramachandra Reddy Vs. C. Desamma, . Absolutely I

have no quarrel with the said decisions. But, at the same time, their Lordships of the Supreme Court made it clear that when the findings of fact

recorded by the Courts below are supportable on the evidence on record, the revisional Court must, indeed, be reluctant to embark upon an

independent reassessment of the evidence. Countering the arguments of the learned Counsel for the respondent, Sri T. Veerabhadrayya, the senior

Counsel appearing for the petitioner, relied upon the decision in Vinod Kumar Arora Vs. Surjit Kaur, wherein their Lordships of the Supreme

Court held at paragraph 9 of their Judgment:

.....the High Court was fully justified in rejecting the finding of the Rent Controller and the Appellate Authority, even though it is a finding of fact,

because both the Authorities have based their findings on conjectures and surmises and secondly because they have lost sight of relevant pieces of

evidence which have not been controverted.

Their Lordships of the Supreme Court also held in Vinod Kumar''s case6 at paragraph 12 of their Judgment:

.....when the Rent Controller and the Appellate Authority have rendered concurrent findings of fact, the High Court was not entitled to disregard

those findings and come to a different conclusion of its own and cited in this behalf the decision of this Court in Hiralal Vallabhram Vs. Kastorbhai

Lalbhai and Others, . The proposition of law put forward by the Counsel is undoubtedly a well settled one but then it must be remembered that the

rule would apply only where the findings have been rendered with reference to facts and not on the basis of non-existent material and baseless

assumptions.

Again their Lordships of the Supreme Court in C. Chandramohan v. Sengottaiyan (Dead) by L.Rs. 2000 (2) ALD 13 (SC) : 2000 (1) ALT 10.5

(DNSC) held at paragraph 11 of their Judgment:

Where the findings recorded by the Appellate Authrity are illegal, erroneous or perverse, the High Court having regard to the ambit of its

revisional jurisdiction u/s 25 of the Act, will be well within the jurisdiction in reversing the findings impugned before it and recording its own

findings.

Keeping the ratio decided in this case, let me examine to what extent the findings recorded by the appellate Court can be sustained. The petitioner

marked several medical prescriptions and pathological reports as documents to prove his ill health. In fact, neither the Court nor the respondent

seriously disputed about the serious ailment the petitioner suffered in the year 1989. In fact, the learned Chief Judge, City Small Causes Court,

Hyderabad in his Judgment observed:

Appellant being an old man aged nearly 70 years needing medical attention cannot be viewed with suspicion.

But unfortunately the learned Chief Judge, City small Causes Court, Hyderabad on perverse view of the matter jumped at the conclusion that the

petitioner filed the eviction petition only with a view to claim higher rent and that there was no bona fide requirement for the petitioner. In support

of his conclusion, he refers to the houses the petitioner is having both at his native place Thakkellapadu and also in Khammam District. Having

taken note of increase in rent from time to time he jumped at this conclusion. The learned Chief Judge also held that after Ex.P-1 suit notice was

received by the respondent compromise talks took place between the respondent and the petitioner wherein the respondent agreed to enhance the

rent to Rs.275/-; in fact, P.W.2 collected the rent for the month of December, 1989 at Rs.275/- and thereafter having been not satisfied with the

enhancement the petitioner filed this eviction petition. Surprisingly though the respondent in his reply notice stated that some compromise talks took

place, neither in the pleadings nor in the deposition, before when the compromise talks took place, he did not mention about it. In fact, no

independent witness was examined to prove that compromise talks took place between the parties. Sri Rajeevan, learned Counsel for the

respondent, strenuously contends that the very fact of issuance of reply notice, dated 19-3-1990 wherein he referred to the negotiations, it has to

be preferred that negotiations took place and the plea of his client cannot be rejected. But, at the same time, he should know that this notice

emanated from himself and the respondent claimed that there were compromise talks. Except this, there is no evidence on record. On the other

hand, P.W.2, with regard to the collection of rent, categorically stated in the witness box that when he went to the respondent to collect the rent of

December 1989 in January 1990 he (P.W.2) objected to receive the excess amount of Rs.25/- but the respondent forced him to receive Rs.275/-

and informed P.W.2 that he (the respondent) would convince the petitioner for enhanced payment of rent. When this fact was brought to the notice

of the petitioner, he categorically instructed him not to collect the excess rent. P.W.2, in his cross-examination, categorically stated:

I do not know whether petitioner got issued a legal notice to the respondent calling upon him to vacate the suit premises for his residential

purpose. I have collected the rent at the rate of Rs.250/- p.m. till the end of November, 1989. Till this day, I have not seen the suit house. I

collected the rent from the respondent at the rate of Rs.275/- only for the month of December.

In fact, not even a suggestion was made to P.W.2 that mediation took place and the parties agreed for enhancement of rent and pursuant to that

agreement, P.W.2 received the enhanced rent. The learned Counsel for the respondent could not elicit even a single sentence in the cross-

examination of P.W.2 in his favour. But unfortunately the learned Judge jumped at the conclusion in his judgment that there was a compromise, that

under compromise talks the parties agreed for enhancement of rent and that was why P.W.2 received the rent for the month of December 1989.

From the above discussion, I have no hesitation to hold that this finding is not based on any material available on record except the solitary

statement of the respondent himself. I have also no hesitation to hold that the respondent pitched upon the plan to see that by paying excess

amount the claim of the petitioner can be defeated and tried to raise the plea of compromise talks. This issue can be viewed from another angle

also. The respondent received the legal notice in December, 1989. He sent the reply notice only on 19-3-1990 i.e., after four months. I do not

know why he waited for so many months for issuing reply notice when P.W.2 refused to receive the rent for the month of January, 1990. So the

finding of the learned Judge that the petitioner having not been satisfied with the quantum of increase in rent thought of filing the eviction petition to

coerce the respondent to the further increase of rent, has no basis whatsoever.

5. Coming to the bona fide requirement, the learned Judge took note of the fact that the petitioner was getting his lands cultivated by giving them on

lease and as and when he was visiting his native place he was staying in the house. His native place being a remote village in Krishna District,

perhaps no one might have come forward to take the suit schedule building on rent or the petitioner, as a sentiment for his ancestors, might have

kept the house for himself. As far as the house at Khammam is concerned, the petitioner categorically stated that his son who was working at

Palvancha was residing in that house. Further when so much of documentary evidence was filed to show that the petitioner was suffering from

illness, the learned Judge, without considering any of these documents, simply jumped at the conclusion in his Judgment that there was no bona fide

requirement for the petitioner. It is rather surprising to see that the appellate Judge has drawn adverse inference for not examining the petitioner''s

son-in-law who is staying in Hyderabad itself to show that the accommodation is not sufficient to allow the petitioner to stay along with him. I do

not know what I have to say on this finding. The proverb in some parts of South India is that no father can stay with his daughter unless he has

degenerated himself to such an extent. Viewed from these moral values it is beyond my comprehension how and why the petitioner has to live in

the house of his daughter leaving his own house in the City. Why the petitioner should depend upon his married daughter. These findings are

atrocious and they cannot be allowed to stand. The respondent successfully dragged the proceedings on for long 11 years. At the time when

petition was filed the petitioner was aged 68 years and now he crossed 79 years. The respondent having been not satisfied with the troubles he

created to the petitioner, wants to still make his (petitioner''s) life miserable which cannot be allowed by this Court.

6. For all the foregoing reasons, the finding recorded by the Courts below with regard to the bona fide requirement is not based upon any material

but based upon extraneous reasons and on mere surmises and conjectures. Therefore, I am interfering with the orders of the Courts below to the

extent of the finding with regard to the bona fide requirement by the petitioner and the same is set aside. Accordingly, the eviction petition is

allowed to that extent. The civil revision petition is accordingly allowed. There shall be no order as to costs.

7. The suit schedule building being a residential house the respondent is given two months time from to-day to vacate and hand over the vacant

possession of the suit schedule building to the petitioner. No costs.