
(2002) 07 AP CK 0033

Andhra Pradesh High Court

Case No: CRP No"s. 2739, 2741 and 2747 of 2000

Kalisetti Venkata Ramana

APPELLANT

Vs

Kolla Eswara Prasad

RESPONDENT

Date of Decision: July 4, 2002

Acts Referred:

- Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 - Section 10(8)

Citation: (2003) 1 ALD 177 : (2002) 3 APLJ 124

Hon'ble Judges: V. Eswaraiah, J

Bench: Single Bench

Advocate: P. Gangaiah Naidu, for the Appellant; M.S.R. Subrahmanyam, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Eswaraiah, J.

These three Civil Revision Petitions are filed by three different tenants against the common respondent who is the co-owner of the petition schedule properties. Since common question arises in all three matters, they are disposed of by a common order.

2. The respondent filed RCC Nos.3 of 1995, 4 of 1995, 6 of 1995 for eviction of the petitioners herein before the Rent Controller-cum-Principal Junior Civil Judge, Srikakulam on the ground of wilful default in payment of rents. The Rent Controller by different orders dated 11th December, 1998, dismissed all the RCCs holding that in view of the disputes among the co-sharers i.e., the respondent and his sister, it cannot be said that the tenants are the defaulters in payment of rents and accordingly the eviction petitions filed by the respondent were dismissed. Against the said order dated 11-2-1998 in RCC No. 3 of 1995, 4 of 1995, 6 of 1995, the respondent filed CMA Nos.2 of 1999, 3 of 1999 and 4 of 1999 respectively before the

Principal Senior Civil Judge, Srikakulam. The Appellate Authority by different orders dated 30th June, 2000 held that the petitioners/tenants have committed wilful default in paying the rents and the respondent, though a co-owner, can maintain the petition for eviction of the tenants. Accordingly all the three appeals were allowed, against which the tenants filed these revisions.

3. Admittedly the petitioners are the tenants in respect of the respective petition schedule properties. They have been paying the agreed rents regularly. Originally all these three petition schedule properties belong to one Kolla Bapanaiah. He died on 19-7-1979. After his death, his wife Ammajamma succeeded to the said properties and collecting the rents. She also died on 4-3-1994. Immediately after her death one Smt. Manikonda Krishna Kumari, sister of the respondent herein issued notice on 9-4-1995 through her advocate to the respondent claiming the petition schedule properties as her own. The respondent herein got issued a reply notice dated 26-5-1995. The respondent also issued similar legal notice to his sister M. Krishna Kumari on 5-6-1994. Ex.B1 is legal notice got issued by M. Krishna Kumari dated 19-5-1994 to all the petitioners/ tenants herein informing that she is the adopted daughter of Ammajamma and the respondent herein i.e., Kolla Eswara Prasad has no right, title or interest in the petition schedule property. She only is entitled to the entire property and accordingly called upon the petitioners herein to handover the petition schedule properties and also render an account for the rents within 10 days and further stated that if they do not acknowledge the title of the said M. Krishna Kumari and pay her the rents, the tenants will be evicted from the petition schedule properties for non-payment of rents. The petitioners herein got issued reply notice in reply to the Ex.B1 stating that they have paid the entire rents up to the date of death of Ammajamma who died on 4-3-1994 and they are ready and willing to pay the rents to the rightful owners and till the dispute between Kolla Eswara Prasad and her sister Manikonda Krishna Kumari is resolved, they have no objection to deposit the rents regularly into the Court or if both the parties agree, in any named bank account. Accordingly they have requested both the parties i.e., respondent and his sister to name a bank. The said reply notice is marked as Ex.A1.

4. The said M. Krishna Kumari filed OS No. 86 of 1994 on the file of the Additional Sub-Court, Srikakulam against the respondent herein and the tenants/ petitioners herein seeking a declaration that the adoption of the respondent is invalid and to declare that the alleged Will, dated 10-2-1985 said to have been executed by Smt. Ammajamma in his name is null and void and to evict the tenants and put her in possession of the same.

5. During the pendency of the said suit the respondent herein filed three RCCs on the file of the Rent Controller-cum-Principal Junior Civil Judge, Srikakulam seeking eviction of the petitioners on the ground of wilful default in payment of rents to the respondent i.e., the Landlord.

6. While the Rent Control Cases are pending, there was compromise between the respondent and M. Krishna Kumari in the suit in O.S. No. 86 of 1994 agreeing for equal shares in the petition schedule properties. It was the contention of the petitioners before the Rent Controller that M. Krishna Kumari is a necessary party to the Rent Control proceedings and without impleading the co-owner as a party to the petition more so, when the co-owner has objected the payment of the rents to the respondent herein, the respondent is not entitled to seek eviction. It is stated that because of title dispute between M. Krishna Kumari and the respondent herein they have been depositing the rents in their bank account and immediately after compromise between the respondent and M. Krishna Kumari which was subsequent to the filing of the Rent Control Cases, there was no default at all on the part of the petitioners and the entire rents have been paid.

7. The respondent herein was examined as PW1. Manikonda Krishna Kumari was examined as PW2. She stated that PW1 is her younger brother. She is the adopted daughter of Ammajamma W/o. Bapanayya. There are no disputes in respect of properties of Bapanayya till the death of the Ammajamma. After the death of Ammajamma she got issued a notice to the respondent herein as well as the petitioners/ tenants claiming the ownership of the properties and asked the tenants not to pay the rents to the respondent herein as she filed a suit for partition against the respondent herein. She stated that as per the compromise she got half share in the petition schedule properties and the respondent got half share. Even after the compromise was affected, she was not added as a party in the eviction petition, but she is withdrawing the rents. The Rent Controller after considering Exs.A1 to A4 and the deposition of PW1 and PW2 and Exs.B1 to B3 and the deposition of RW1, dismissed the eviction petitions as not maintainable in the absence of non-adding the co-sharer and the Rent Controller also held that there is no wilful default. Hence the question of ordering eviction of the petitioners does not arise.

8. The Appellate Authority while considering the maintainability of the eviction petitions filed by the respondent who is a co-owner, held that eviction petitions filed by the respondent are maintainable and ordered eviction on the ground of wilful default in payment of rents. The Appellate Authority held that the petitioners herein never denied the title of the property. They only said that they will pay the rents to the correct person who would be found to be the owner and after filing the eviction petitions only the settlement was arrived resolving the disputes between the respondent and his sister PW2 with regard to the default in payment of rents, the Rent Control Appellate Authority held that the petitioners were paying the rents to the respondent PW1 during the lifetime of Ammajamma and therefore the petitioners cannot say that the respondent has no right to collect the rents before the death of Ammajamma or till the notice is served by PW2. PW2 was not at all in the picture till the death of Ammajamma who died on 4-3-1994. The Rent Control Appellate Authority without deciding the maintainability of the petition filed by the respondent simply held that the dismissal of the petitions by the Rent Controller is

not in accordance with law and allowed the CMAs on the ground that the petitioners committed wilful default in payment of rents.

9. The question that arises for consideration in all these CRPs is as to whether the rent control cases filed by the respondent are maintainable.

10. It is not in dispute that the co-owner is entitled to file an eviction petition against the tenants. A co-owner is also a landlord within the meaning of Section 2(vi), which reads as follows:

"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"

The definition of the tenant as defined in Section 2 (ix) as follows:

"Tenant: means 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 as a public market, cart-stand or slaughter-house or of rents for shops has been framed out or leased by a local authority."

The co-owner is also a landlord within the meaning of Section 2(vi) and is entitled to file an eviction petition provided he is receiving or is entitled to receive the rents of the properties whether on his own account or on behalf of other person or on behalf of himself and others or as agent or be entitled to receive rent if the building were let out to a tenant.

11. It is the case of the petitioners herein that the respondent is not entitled to receive the entire rents of the petition schedule properties. His title was in dispute as on the date of the filing of the eviction petitions. The co-owner got issued a legal notice to the petitioners not to pay the rents to the respondent but to pay the rents to her i.e., PW2 alone. In those circumstances the petitioners requested the respondent and PW2 to settle dispute with regard to the title of the property and they have no objection to pay the rents in whatever manner they like. Admittedly the respondent has not got any consent on behalf of the other co-owner to file the eviction petition and in view of the dispute with regard to the title of the petition schedule properties between the respondent and his sister PW2, the other co-owner has not been impleaded as a party to the eviction proceedings. The petitioners were in dilemma to whom the rents have to be paid. There is no dispute with regard to payment of the rents to the respondent and PW2 immediately after the compromise

that was entered into during the pendency of the eviction petitions. The question that arises for consideration is as to whether a cause of action existed for filing the eviction petitions as on the date of filing of the RCCs., in view of the dispute raised with regard to the title by the sister of the respondent and particularly the disputes were settled only during the pendency of the RCCs to the effect that the respondent is only half shareholder and his sister who raised the dispute is the remaining half shareholder.

12. The Apex Court in [Kanta Goel Vs. B.P. Pathak and Others](#), , held that, while considering the right of landlord who is a co-heir for the institution of the suit without the consent of the other co-owner who is a co-heir to whom the rent is being paid by the tenant and who was receiving the rents on behalf of him would be a landlord for the purpose of the Delhi Rent Control Act and the co-heirs constituted the body of the landlords and by consent, implicit or otherwise of the plurality of landlords, one of them representing them - all was collecting rent and therefore the eviction petition was maintainable. It was not the case where the co-owners wanted the tenant not to pay rents to the co-owner, who filed the eviction petition. There was nothing on record to show that the co-owners" objected to the claim of the eviction petitioner therein. In those circumstances the Apex Court held that in the absence of any objection by the co-owners the eviction petition could be filed by one of the co-owners.

13. However, in the instant case there is a specific objection by the co-owner.

14. A Division Bench of this Court in the case of Damodaram Chetti v. Rukmaniamma 1967 (2) AWR 200, held that an eviction petition by co-sharer is not maintainable without impleading the remaining co-sharers. A learned single Judge of this Court in [Vasant Rao Ankilkar Vs. Nalini Bai Joshi](#), , held that just as an agent being handicapped in filing eviction petition without the previous written consent of the landlord, one of the sharers also cannot maintain an eviction petition without the written consent of the other co-sharers. Another learned single Judge of this Court in [S. Sarvaiah Vs. Prabhavathi and Others - L.Rs. of Joseph](#), , followed the said cases and held that the eviction petition filed by the co-owner is not maintainable without impleading the remaining co-owner or without the consent of the other co-owners, especially when there is an objection from the other co-owner.

15. u/s 10(8), the persons receiving or is entitled to receive the rent is merely an agent of the landlord and he cannot apply for the eviction of a tenant without the previous written consent of the landlord.

16. In the instant case there is a specific objection by the co-owner not to pay the rents to the respondent who has filed the eviction petitions. Admittedly the respondent neither obtained the consent from the co-owner nor impleaded the other co-owner as one of the parties to the eviction petitions. Therefore it cannot be said that the respondent is entitled to maintain the eviction petitions in view of the

facts and circumstances stated above. Further, the respondent is not empowered to maintain the eviction petitions in view of the dispute regarding the title of the property and the said dispute was resolved only subsequent to the filing of the eviction petitions and therefore the petitions filed by the respondent are not maintainable as his ownership was doubtful and he was not the full owner as on the date of the filing of the eviction petitions and there was a demand by the other half shareholder not to pay the rents to the respondent and therefore it cannot be said that the non-payment of the rents to the respondent herein is wilful.

17. I therefore hold that the petitions filed by the respondent who is a half shareholder alone of the petitions schedule properties are not maintainable in view of the objection and the dispute raised by the other half shareholder of the said properties.

18. Accordingly the Revision Petitions are allowed and the orders of the Rent Control Appellate Authority in CMA Nos.2/ 1999, 3/1999 and 4 /1999 are set aside and the orders of the Rent Controller are confirmed dismissing the eviction petitions. No order as to costs.