
Nazeer Khan Vs Vijayanagar Welfare Association

SA No. 647 of 2006

Court: Andhra Pradesh High Court

Date of Decision: Oct. 23, 2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 20 Rule 12, Order 29 Rule 1, Order 6 Rule 14#Evidence Act, 1872 " Section 116#Transfer of Property Act, 1882 " Section 106, 116

Citation: (2008) 1 ALD 828

Hon'ble Judges: B. Seshasayana Reddy, J

Bench: Single Bench

Advocate: B. Madhava Reddy, for the Appellant; R.A. Achuthanand, for the Respondent

Final Decision: Dismissed

Judgement

B. Seshasayana Reddy, J.

Unsuccessful defendant in the trial Court as well as the lower appellate Court is the appellant in this second

appeal.

2. The appellant filed this second appeal against the judgment and decree, dated 1.2.2006, passed in A.S. No. 343 of 2003 on the file of XII

Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, whereby and whereunder the learned Additional Chief Judge dismissed

the appeal filed by the appellant/defendant, confirming the judgment and decree dated 9.6.2003 passed in O.S. No. 3058 of 2000 on the file of

VIII Junior Civil Judge, City Civil Court, Hyderabad, and directed the appellant to vacate the suit premises within two months.

3. The plaint averments in brief are: The appellant/defendant is the tenant of the respondent/ plaintiff in respect of part of the premises bearing

Municipal No. 10-3-566/11, Vijayanagar Welfare Association Building, Vijayanagar Colony, Hyderabad. The appellant/defendant took the

premises in dispute on lease under an agreement dated 1.1.1989 for a period of two years on a monthly rent of Rs. 473/- excluding electricity

consumption charges. Subsequently rent came to be enhanced from time to time to Rs. 1,400/- per month exclusive of electricity consumption

charges. The appellant/ defendant did not come forward to renew the lease agreement in spite of repeated requests made by the respondent/plaintiff. The appellant/defendant stopped paying rents from October, 1999 to February, 2000 amounting to Rs. 7,000/- at the rate of

Rs. 1,400/- per month. The appellant/ defendant issued a reply consenting to enhance the rent by Rs. 200/- per month after completion of three

years from December, 2000. The respondent/plaintiff issued notice dated 23.2.2000 to the appellant/defendant u/s 106 of the Transfer of Property

Act determining the tenancy and calling upon the appellant/ defendant to vacate the premises by 1.4.2000. Since the appellant/defendant did not

vacate the premises, the respondent/ plaintiff filed the suit for eviction and recovery of arrears of rent, mesne profits and for damages for use and

occupation since the date of termination of the tenancy.

4. The appellant/defendant filed written statement admitting the relationship of landlord and tenant between him and the respondent/ plaintiff. He

pleaded that he has been paying the rents regularly to the respondent/ plaintiff and that he agreed to enhance the rent by Rs. 200/- per month after

completion of three years i.e., from the month of December, 2000. He further pleaded that there is a dispute between the Housing Board and the

respondent/plaintiff in respect of the premises in question and therefore, the respondent/plaintiff has no right to evict him.

5. The trial Court framed the following issues for trial:

- (1) Whether the plaintiff is entitled for ejectment of the defendant?
- (2) Whether the plaintiff is entitled for Rs. 3,200/- with interest? If so, at what rate?
- (3) Whether the plaintiff is entitled for mesne profit ? If so, at what rate?
- (4) To what relief?

6. On behalf of the respondent/ plaintiff, one witness was examined as PW.I and 10 documents were marked as Exs.AI to A10, and whereas, the

appellant/defendant got himself examined as DW.I and marked 98 documents as Exs.BI to B98.

7. The trial Court, on considering the evidence brought on record and on hearing Counsel for the parties, ordered eviction of the appellant/defendant and directed him to vacate the premises within three months. The relief granted by the trial Court is as follows:

Issue No. 4: In the result, the suit of the plaintiff is partly decreed as follows:

(1) For Rs. 1,040/- towards balance of arrears of rent, mesne profit for nine days and towards charges of legal notice and directing the defendant

to pay the same within ONE month from the date of this judgment and decree.

(2) Directing the defendant to vacate the suit premises within THREE months from the date of this judgment and decree.

(3) Mesne profit from the date of suit till delivery of possession shall be ascertained on filing of the application by the plaintiff under Order 20, Rule

12 Civil Procedure Code.

(4) In the circumstances of the case, the plaintiff is not entitled to interest on the above said amount of Rs. 1,040/-

(5) The plaintiff shall be entitled to costs of the suit.

8. The appellant/defendant filed A.S. No. 343 of 2003 on the file of XII Additional Chief Judge, City Civil Court, Hyderabad, assailing the

judgment and decree dated 9.6.2003 passed in O.S. No. 3058 of 2000 on the file of VIII Junior Civil Judge, City Civil Court, Hyderabad. It was

contended before the lower appellate Court that the respondent/plaintiff is no more the owner of the premises in question in view of the Housing

Board demanding the respondent/plaintiff to vacate the premises. It was also contended by him before the lower appellate Court that PW.I has no

authorization to institute the proceeding on behalf of the plaintiff-Association and therefore, the suit was not legally instituted and the same was

liable to be dismissed.

9. The lower appellate Court formulated the following point for consideration:

(1) Whether the appellant is liable to be evicted from the suit premises?

10. The lower appellate Court, on reappraisal of the evidence brought on record and on hearing Counsel for the parties, came to the conclusion

that the quit notice which has been exhibited as Ex.A7 is valid and no ground is made out by the appellant/defendant to interfere with the findings

recorded by the trial Court and thereby dismissed the appeal, by judgment and decree dated 1.2.2006. Hence, this second appeal by the

appellant/defendant.

11. The second appeal came to be admitted on 30.6.2006 on the following substantial questions of law:

(1) Whether the authorization given in favour of PW.I to institute the suit is bad in law?

(2) Whether the letter addressed to the appellant/defendant by the housing board has any affect on the proceeding initiated by the respondent/

plaintiff to evict the appellant/ defendant from the premises in question.

It is profitable to refer the substantial questions of law raised by the appellant/ defendant in ground Nos. 2 and 4 of appeal and they are:

(2) PW.I admitted in his chief-examination itself that his tenure as a Secretary ended in March, 2000, and he filed the suit with his signature on

11.4.2000, when he was not authorized by the plaintiff Association and no resolution was passed in his favour and his evidence as per Rule 17(b)

of article Society cannot be looked into as the Secretary is only entitled and authorized to institute the suit and PW.I was not the Secretary on

11.4.2000, and the suit is bad in law.

(4) The first appellate Court observed in the judgment on page 11 that the appellant did not examine any member of the housing board authority

nor adduced any documentary evidence to show that the respondent has ceased the right over the suit property by termination of the tenancy, but

it is an admitted fact and now the appellant has received a letter No. 8614/J5/64, dated -5.2006, which is received on 18.5.2006, and the same is

filed in the material paper wherein the housing board called for the appellant willingness to purchase the suit premises, as the housing board offered

to sell the same to the appellant.

12. Heard learned Counsel appearing for the appellant/defendant and learned Counsel appearing for the respondent/ plaintiff.

13. Learned Counsel appearing for the appellant/defendant submits that PW.I is not the properly authorized person to file the suit and in which

case the proceedings initiated by him seeking eviction of the appellant/defendant from the premises in question are to be declared as bad in law. He

further submits that in view of the letter addressed by the Andhra Pradesh Housing Board to the appellant/defendant calling for his willingness to

purchase the suit premises, the respondent/ plaintiff is no more the landlord of the premises in question and in which case, the suit is liable to be

dismissed. Learned Counsel would further submit that since the respondent/ plaintiff accepted the rents subsequent to the termination of tenancy,

therefore, it amounts to waiver. In support of his submissions, reliance has been placed on the following decisions:

(1) Kapur Chand Vs. Kanji,

(2) S. Thangappan v. P. Padmavathy (SC) 1999 (2) RCR 277

14. In Kapur Chand"s case (supra), a Division Bench of this Court held that if the landlord accepted rent in respect of residential building for 7

months successively for the period after the notice to quit, the circumstance goes to show that the landlord intended to treat the terminated tenancy

as continuing.

14.1 In S. Thangappan"s case (supra), the Supreme Court held that a person inducted as tenant by landlord, the tenant later on cannot deny title of

landlord howsoever defective it might be, but subsequently if landlord loses his title then denial of title by tenant would not be covered by principle

of estoppel. Paras 13 and 14 of the judgment need to be noted and they are thus:

13. With reference to the subsequent event the other submission for the appellant is with reference to the Devasthanam suit, viz., the affidavit by the

respondent in which it is urged he admits to be lessee of Devasthanam and thus his averment in the present proceeding being the owner of the

premises is wrong. This also would be of no avail. Firstly, we are not called upon to examine the said suit. The respondent No. I was not even

impleaded hence was not a party there. This apart relationship between the appellant and the respondent is of tenant and landlord under the Act

while relationship between the respondent and Devasthanam may be of lessee and lessor in a different set of fact. This would make no difference.

The definition of "landlord" is u/s 2(6) and under its explanation even tenant is treated to be landlord. The aforesaid two decisions, viz., Mangat

Ram and Another Vs. Sardar Meharban Singh and Others, and D. Satyanarayana Vs. P. Jagadish, , neither render any help to the appellant nor

could it be distinguished as not to apply to the facts of the present case. On the contrary the two decisions squarely applies to the present case.

Section 116 of the Indian Evidence Act deals with the principle of estoppel against a tenant where he denies the title of his landlord.

Section 116 reads as under:

116. Estoppel of tenant and of licensee of person in possession.-No tenant of immovable property, or person claiming through such tenant, shall,

during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such

immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted

to deny that such person had title to such possession at the time when such licence was given.

14. This section puts an embargo on a tenant of an immovable property, during the continuance of his tenancy to deny the title of his landlord at the

beginning of his tenancy. The significant words under it are at the beginning of the tenancy". This is indicative of the sphere of the operation of this

section. So a tenant once inducted as a tenant by a landlord, later he cannot deny his landlord title. Thus, this principle of estoppel debars a tenant

from denying the title of his landlord from the beginning of his tenancy. Howsoever defective title of such landlord could be, such tenant cannot

deny his title. But subsequent to his induction as tenant if the landlord loses his title under any law or agreement and there is threat to such tenant

of his eviction by subsequently acquired paramount title holder then any denial of title by such tenant to the landlord who inducted him into the

tenancy will not be covered by this principle of estoppel under this section. In *Mangat Ram and Another Vs. Sardar Meharban Singh and Others*, ,

this Court held:

The estoppel contemplated by Section 116 is restricted to the denial of title at the commencement of the tenancy and by implication it follows that

a tenant is not estopped from contending that the title of the lessor has since come to an end.

15. Per contra learned Counsel appearing for the respondent/plaintiff submits that PW.I is the Special Secretary of the plaintiff-Association and

authorization given by the plaintiff-Association has been marked as Ex.A1 and the same has been reiterated by a resolution which has been marked

as Ex.A9 and therefore, the suit filed by PW.I on behalf of the plaintiff-Association is legal and valid. It is nextly contended by him that the

appellant/ defendant having taken the premises on lease from the respondent/plaintiff is estopped from disputing the title of the plaintiff-Association

u/s 116 of the Transfer of Property Act. In support of his submissions, reliance has been placed on the following decisions of the Supreme Court.

1. *Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd.*, .

2. *United Bank of India Vs. Naresh Kumar and others*, .

16. In *T.M. & Co. 's case* (supra), the Supreme Court held that suit filed on behalf of the Company by its Secretary holding General Power of

Attorney from the company would be maintainable even if the action taken by the Secretary is approved by the Directors subsequently.

17. In Naresh Kumar's case (supra), the Supreme Court held that a company can sue and be sued in its own name. Reading Order 6 Rule 14

together with Order 29 Rule 1 of the Code of Civil Procedure, it would appear that even in the absence of any formal letter of authority or power

of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the

pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 CPC, as a company is a juristic entity, it can duly authorize

any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with provisions of Order 6

Rule 14 CPC. A person may be expressly authorized to sign the pleadings on behalf of the company, for example by the Board of Directors

passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where

pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification can

be express or implied.

18. The plaintiff-Association filed the suit represented by its Secretary K. Achutha Rao. The said K. Achutha Rao has been examined as PW.I.

The principal contention of the appellant/defendant is that the term of PW.I as Secretary of the plaintiff-Association came to be ended much prior

to the filing of the suit and therefore, the suit filed by PW.I representing the Vijayanagar Welfare Association is bad in law.

19. Indisputably plaintiff is the Vijayanagar Welfare Association. PW.I was its Secretary. Ex.A1 is the true extract of resolution of the executive

committee meeting. It is evident from the resolution dated 25.10.1999, the Secretary is authorized to file the suit for eviction of the

appellant/defendant on behalf of the plaintiff-Association. PW.I was the Secretary of the plaintiff-Association till March, 2000. As per the Articles

of Association, the Secretary shall continue in office until the fresh nominations are called for and elections completed within 30 days of the

completion of the tenure. Article 11(g) of Memorandum of Articles of Association of the Vijayanagar Welfare Association reads as hereunder:

In the event of any contingency preventing the conduct of elections and their completion due to circumstances unforeseen and beyond the control

of the working committee or the Returning Officer before the expiry of the tenure of the working committee including the office bearers, they cease

to be so from the date of expiry of their tenure as working committee members or office bearers except for the President, Secretary and Treasurer

who shall continue in office till the convention of General Body by the Secretary, (which shall be within thirty days of expiry of date of tenure of

their office) to appoint an ad hoc body to conduct the election and manage the affairs of Association till the newly elected body occupies office,

provided that the case of their being no valid nominations to the post of President, Secretary or Treasurer as herein provided on or before the date

fixed for the purpose or in the event of all the nominations for any of the office of President, Secretary or Treasurer being withdrawn as herein

provided then, the person, holding the office of President, Secretary or Treasurer as the case may be shall continue in office until fresh nominations

are called for and election completed within thirty days of the completion of their tenure of office.

20. Ex.A7 is the notice calling upon the (appellant/defendant to pay arrears of rents and eviction from the suit schedule premises. It is issued by

PW. 1 on behalf of the plaintiff-Association. The appellant/ defendant issued Ex.A8 reply notice to Ex.A7 notice. He did not dispute the authority

of PW.I to issue Ex.A7 notice. Under Order 6 Rule 14 of the Civil Procedure Code, a pleading is required to be signed by the party and its

pleader, if any. Order 29 Rule 1 of the CPC provides that in a suit by or against a Corporation, any pleading may be signed or verified on behalf of

the corporation by the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case. It is

the specific case of PW.I that after expiry of his tenure as Secretary, he became the Special Secretary. Ex.A1 is the authorization given to PW1 to

institute proceedings on behalf of the plaintiff-Association. Ex.A9 is the resolution of the plaintiff-Association authorizing PW.I to give evidence. It

is evident from Exs.A1 and A9 that PW.I is competent to initiate proceedings against the appellant/ defendant for eviction from the premises in

question. Therefore, the contention of the appellant/defendant that PW.I is not authorized to sign and give evidence on behalf of the plaintiff-

Association has no substance.

21. It is nextly contended that the appellant/defendant paid the entire arrears of rent along with Ex.A8 reply notice and therefore, no cause of

action survives for the plaintiff-Association to file suit for eviction. Ex.A7 is the notice issued by the plaintiff-Association to the appellant/ defendant.

It is stated in the notice that whatever payment appellant/defendant makes after receipt of the notice would be received under protest without

prejudice to its rights. For better appreciation, I may refer Para.9 of Ex.A7 notice, which reads as hereunder:

9. As such, our client calls upon you to pay the arrears of rent from October, 1999 to February, 2000 amounting to Rs. 7,000/- at the rate of Rs.

1,400/- per month within 7 days from the date of receipt of this notice. It is specifically made it clear that any amounts paid after the issue of the

notice of termination, will be accepted under protest without prejudice to the rights of our client and the acceptance of amount shall not waive the

notice. As such, our client calls upon you to pay the arrears of rent within 7 days from the date of receipt of this notice and you must vacate the

premises by end of 1st day of April, 2000 and handover vacant possession on 2nd April, 2000 in view of our client having terminated the tenancy.

It is evident from Ex.A7 notice that whatever payment the appellant/defendant makes after receipt of Ex.A7 notice, it would be received by the

plaintiff-Association under protest. In the circumstances, mere acceptance of the amount after issuing of eviction notice does not efface the default

committed by the appellant/defendant.

22. In view of the above discussion, I find that there is no valid ground made out by the appellant /defendant to interfere with the judgment of the

trial Court as confirmed by the lower appellate Court.

23. Accordingly, the second appeal fails and it is hereby dismissed with costs. The appellant/ defendant is granted three months" time for vacating

the premises subject to the following conditions:

(1) The appellant/defendant shall file an undertaking before the trial Court within two weeks from today that he would vacate the premises on or

before the expiry of three months from today.

(2) He. shall deposit the arrears of rent, if any, within two weeks and shall continue to pay the current rents regularly by 10th of every succeeding

month till he vacates the premises.