

(2015) 3 ALT 183

Andhra Pradesh High Court

Case No: C.R.P. No. 4922 of 2014

Shahi Jamia Mosque
Managing Committee

APPELLANT

Vs

Deshmukh Akbar
Basha Khan and
Others

RESPONDENT

Date of Decision: March 10, 2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10, 151

Citation: (2015) 3 ALT 183

Hon'ble Judges: M.S. Ramachandra Rao, J

Bench: Single Bench

Advocate: P. Veera Reddy, Senior Counsel for Karri Murali Krishna, for the Appellant; O. Udaya Kumar, Advocates for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.S. Ramachandra Rao, J.

This Revision is filed questioning the order dt.20.10.2014 in IA. No. 94 of 2014 in OS. No. 74 of 2013 on

the file of Senior Civil Judge, at Rayachoty. The said suit was filed by respondent Nos. 1 and 2 herein against respondent Nos. 3 to 56 for

recovery of possession of certain shop rooms, said to be located in the plaint schedule properties, and for a direction to defendants to pay arrears

of rent for the said shop rooms till the date of eviction of tenants.

2. The basis of the said suit was that the plaint schedule property belongs to respondent Nos. 1 and 2/plaintiffs and they have inherited the same

from the owner late Deshmukhi Hussain Khan who obtained the property under a registered partition deed dt.03.07.1933. The respondent Nos. 1

and 2 contended that respondent Nos. 3 to 56/defendants are the tenants of shops belonging to respondent Nos. 1 and 2 and which are located in

item Nos. 1 and 2 of the plaint schedule property, but they are not paying any rents to them; and that they had issued legal notices to them to

vacate the shops on 13.06.2013, but they have not done so.

3. It is not disputed that written statement was filed by defendants questioning the title of respondent Nos. 1 and 2/plaintiffs and contending that the

plaint schedule property belongs to Shahi Jamiya Mosque and is a Wakf property. It was also contended that there is no relationship of landlord

and tenant between respondent Nos. 1 and 2 and the defendants and that the defendants are the tenants of the Shahi Jamiya Mosque which is

being managed by a committee and that they were inducted into the shop rooms by the said committee.

4. While the suit was pending, the petitioner herein filed I.A. No. 94 of 2014 under Order I Rule 10 r/w Section 151 CPC to implead itself as

defendant No. 55 in the suit contending that respondent Nos. 1 and 2 are not the owners of plaint schedule property, that the petitioner herein is

the owner of the property and that the property is a Wakf property.

5. This application was opposed by respondent Nos. 1 and 2 who contended that petitioner had nothing to do with the plaint schedule property

and there was no necessity to implead it; that the suit is filed for eviction and recovery of arrears of rent against tenants of respondent Nos. 1 and

2, i.e., respondent Nos. 3 to 56, and therefore, this application ought to be dismissed.

6. Respondent Nos. 3 and 5 to 32, 34 to 56 filed a counter stating that petitioner is the owner of the property and they are paying rents to

petitioners" Secretary and respondent Nos. 1 and 2 have no connection with the plaint schedule property.

7. Before the Court below, the petitioner filed Exs. P. 1 to P. 12, while respondent Nos. 1 and 2 filed Exs. R.1 to R.9.

8. By order dt.20.10.2014, the Court below dismissed the said IA. It held that the suit is one filed for eviction and recovery of arrears of rent.

While the petitioner is claiming right over the plaint schedule property, the petitioner has not filed any document to show that the plaint schedule

property belongs to petitioner and was registered and published in a Gazette notification as on the date of the filing of the suit. It observed that in a

suit for eviction against a tenant the questions that would arise for consideration are: (i) whether the defendant is a tenant or not; (ii) whether the

tenancy was properly terminated and (iii) whether the defendant is liable to be evicted or not. It held that the question of examining the plaintiffs"

title would not arise and the presence of petitioner would not in any way assist the court in determining the question involved in the suit. It held that

impleading the petitioner would widen the scope of the suit into one for declaration of title and it is impermissible in law.

9. Questioning the same, this Revision is filed.

10. Heard Sri P. Veera Reddy, Senior Counsel appearing for Sri K. Murali Krishna counsel for petitioner, and Sri O. Udaya Kumar for

respondent Nos. 1 and 2. Respondent Nos. 3 to 56 have been shown as not necessary parties.

11. Sri P. Veera Reddy, counsel for petitioner, contended that the order of the court below is erroneous and that the court below erred in

dismissing the said IA for impleadment of petitioner; that substantial material evidence has been filed before the court below in support of the title

of petitioner, but the court below has ignored it; and therefore its order needs to be set aside and the IA should be allowed.

12. The counsel for respondent Nos. 1 and 2, on the other hand, contended that the court below had rightly rejected the application filed by

petitioner seeking impleadment in the suit filed by respondent Nos. 1 and 2 against respondent Nos. 3 to 56 for eviction and recovery of arrears of

rent; that the impleadment of petitioner in such a suit would convert a suit for eviction filed by respondent Nos. 1 and 2 against their alleged

tenants, i.e., respondent Nos. 3 to 56, into a suit for declaration of title and it would facilitate the petitioner to get a declaration of its title even

though the petitioner had not paid a single rupee as a Court Fee; that if the petitioner has any right in the plaint schedule property, the petitioner

should avail remedies open to it in law in that regard. He placed reliance on the decisions in Life Insurance Corporation of India Vs. M/s. Indian

Automobiles and Co. and others, AIR 1991 SC 884 : (1990) 3 JT 383 : (1990) 2 SCALE 180 : (1990) 4 SCC 286 : (1990) 3 SCR 545 :

(1990) 2 UJ 341 ; Dr. Ranbir Singh Vs. Asharfi Lal, (1995) 6 JT 668 : (1995) 5 SCALE 470 : (1995) 6 SCC 580 : (1995) 3 SCR 847 Supp

and Tribhuvanshankar Vs. Amrutlal, (2013) 11 AD 414 : (2013) 14 JT 491 : (2014) 1 RCR(Civil) 206 : (2013) 2 RCR(Rent) 700 : (2013) 13

SCALE 627 : (2014) 2 SCC 788 .

13. I have noted the submissions of both sides.

14. The facts narrated above indicate that respondent Nos. 1 and 2 have pleaded that they are the owners of plaint schedule property and that

respondent Nos. 3 to 56 are their tenants and that respondent Nos. 3 to 56 are liable to be evicted because they are not paying rents to

respondent Nos. 1 and 2, and they should also be directed to pay arrears of rent till they are evicted.

15. Essentially therefore the suit is a suit for eviction filed by respondent Nos. 1 and 2 who claim to be owners of the plaint schedule property

against persons who they claim to be their tenants. The petitioner herein is setting up a title rival to respondent Nos. 1 and 2 and asserts that the

property belongs to it and therefore it is a necessary party in the case.

16. In Life Insurance Corporation of India Vs. M/s. Indian Automobiles and Co. and others, AIR 1991 SC 884 : (1990) 3 JT 383 : (1990) 2

SCALE 180 : (1990) 4 SCC 286 : (1990) 3 SCR 545 : (1990) 2 UJ 341 (supra) , the Supreme Court has held that a Rent Controller under the

provisions of the T.N. Rent Control Act would step in only if there is a jural relationship of landlord and tenant between the parties and that even if

an issue of title arises therein, the Rent Controller would only look into the question whether the person applying for fixation of fair rent under

Section 4 of the said Act is a tenant or a landlord in respect of the premises in question; and that he cannot decide the question of title except to the

limited extent of stating whether the denial of title by a tenant is bona fide or not.

17. In *Dr. Ranbir Singh Vs. Asharfi Lal*, (1995) 6 JT 668 : (1995) 5 SCALE 470 : (1995) 6 SCC 580 : (1995) 3 SCR 847 Supp the Supreme

Court held that in para. 9 as under:

9. It may be pointed out that it is well-settled law that the question of title of the property is not germane for decision of the eviction suit. In a case

where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much

limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but

fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the

defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary

question for determining the main question about the relationship between the litigating parties. In *Life Insurance Corporation of India Vs. M/s.*

Indian Automobiles and Co. and others, AIR 1991 SC 884 : (1990) 3 JT 383 : (1990) 2 SCALE 180 : (1990) 4 SCC 286 : (1990) 3 SCR 545 :

(1990) 2 UJ 341 this Court had an occasion to deal with similar controversy. In the said decision this Court observed that in a suit for eviction

between the landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If

the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It has been

further observed that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive

the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to do into

tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title

of the landlord is bona fide in the circumstances of the case

18. This principle has been reiterated in Tribhuvanshankar Vs. Amrutlal, (2013) 11 AD 414 : (2013) 14 JT 491 : (2014) 1 RCR(Civil) 206 :

(2013) 2 RCR(Rent) 700 : (2013) 13 SCALE 627 : (2014) 2 SCC 788 .

19. A learned single Judge of this Court in Gudula Sitaratnam Vs. Andhavarapu Govinda Rajulu and others, (2000) 3 ALD 592 : (2000) 2 ALT

608 held as under:

It may be mentioned here that the suit was for eviction of a tenant. It is stated by the learned Counsel for the respondents that, in fact, the

defendants-tenants have not disputed the title of the plaintiffs in the suit. At any rate, in a suit for eviction filed by the owner against his tenant. the

question that would arise for consideration would be whether the defendant is a tenant or not and whether the tenancy was properly terminated

and whether he is liable to be evicted or not. The question of examining petitioner's title based on agreement of sale would scarcely arise in such a

suit. If the petitioner has some rights based on agreement of sale in his favour, it is open to him to vindicate his rights by way of a separate suit. His

presence in the suit would in no way assist the Court in determining the questions involved in the suit. By no stretch of imagination, the petitioner,

on the facts of the case, can be considered either as a necessary or even a proper party to the suit. In fact, it is brought to the notice of this Court

that subsequently the petitioner herein has already filed a separate suit for specific performance in O.S. No. 273 of 1998 on the file of the Junior

Civil Judge, Srikakulam.

20. Having regard to the above decisions, the issue of title is not necessary to be gone into in the suit for eviction filed by respondent Nos. 1 and 2

against respondent Nos. 3 to 56 and the court below would be primarily concerned with the question whether there is a relationship of landlord

and tenant between respondent Nos. 1 and 2 and respondent Nos. 3 to 56. The scope of the suit is very limited and a question of title cannot be

gone into therein. The suit of respondent Nos. 1 and 2 might be dismissed even if they succeed in proving their title but fail to establish privity of

contract of tenancy with respondent Nos. 3 to 56.

21. In this view of the matter, I am of the opinion that the court below has rightly dismissed the application of petitioner seeking impleadment in the

suit. However, the observations of the court below regarding the title of petitioner are set aside and liberty is granted to petitioner to establish its

title to the subject property in an appropriate proceeding before an appropriate Forum.

22. Therefore, the Civil Revision Petition is dismissed with the above observations. No order as to costs. As a sequel, miscellaneous petitions

pending, if any, shall stand closed.