

IN THE COURT OF THE SENIOR CIVIL JUDGE:: GOOTY

Present: Smt. L.Tejevathi, Senior Civil Judge, Gooty

Monday, this the 19th day of October, 2020

Civil Miscellaneous Appeal No.01 of 2017**Between:**

A.Nithyananda

...Appellant/petitioner

And

A.Babu Prasad

...Respondent/respondent

This appeal filed on behalf of the appellant/petitioner against the decree and order dt.08.3.2017 passed in R.C.C No.1/2014 on the file of Junior Civil Judge, Guntakal between;

A.Nithyananda

....Petitioner

And

A.Babu Prasad

....Respondent

This appeal is coming on 13.10.2020 for hearing before me in the presence of Sri T.Dhanunjaya, advocate for the appellant/petitioner and the respondent being set ex parte and the matter having stood over for consideration till this day, and this court delivered the following judgment :

: J U D G M E N T :

1. This Civil Appeal is preferred against the decree and order dt.08.3.2017 in R.C.C No.1/2014 on the file of Junior Civil Judge, Guntakal challenging the said decree and order passed against the petitioner.
2. The appellant herein is the petitioner in R.C.C.No.1/2014 and the respondent herein is the respondent in the said R.C.C.
3. The brief averments of the petition are as follows:

The petitioner is the absolute owner of the petition schedule property as it fell to his share in the family partition in the year 1987 among himself, his elder brother A.Sreenivasulu and the respondent and since then he has been enjoying the schedule property and the respondent took the petition schedule property from him on monthly rent of Rs.2,000/- in the month of October-2011 for his residence and since then he has been continuing as a tenant and paid rent for six months i.e from October-2011 to April-2012 and thereafter the respondent committed willfully default in payment of rent from May-2012 and in spite of several demands made by the petitioner, the respondent neither paid the arrears of rent nor vacated the petition schedule property and the petitioner is working in a Fertilizer Agency at Kurnool and now he wants to shift his family to Guntakal and occupy the petition schedule house and so he required the premises for his bonafide requirement.

4. It is the contention of the respondent that the petitioner is his brother and he has been residing at Kurnool for the last several years and the respondent never took the petition schedule house for rent from the petitioner as he is not owner of the said house, and it is his sister by name A.Rajeswari who is owner of the said house and he has been residing in the said house without paying any rent and he never paid any rent to the petitioner and when the petitioner issued legal notice his sister reprimanded the petitioner, and that though the petitioner promised not to proceed further, filed this petition for wrongful gain.

5. During the inquiry, on behalf of the petitioner P.Ws.1 to 3 were examined and Exs.P.1 and P.2 were marked. On behalf of the respondent R.Ws.1 and 2 were examined and no document is marked.

6. After considering the evidence adduced by both parties the learned Junior Civil Judge, Guntakal dismissed the R.C.C.No.1/2014 without costs. Having aggrieved by the said decree and order passed by the Trial Court, the unsuccessful petitioner preferred this appeal with the following material grounds:

1. The order and decree of the Lower Court is against law, weight of evidence and probabilities of the case.

2. The Lower Court should have seen that admissions made by the witnesses of the respondent clearly establish title of the petitioner over the petition schedule property.

3. The Lower Court should have seen that R.W.2 has clearly admitted that the appellant is the owner of the petition schedule property.

4. The Lower Court should have seen that the respondent has failed to establish that P.W.1 has sold away the property to R.W.2 as alleged and so the Lower Court should have held that the petitioner is the absolute owner of the petition schedule property.

5. The Lower Court should have seen that the evidence of P.W.2 and P.W.3 clearly establish the relationship of landlord and tenant between the petitioner and the respondent.

6. The Lower Court having observed that when the respondent has come up with definite case and failed to prove the same, the Lower Court has no other option except to believe the version of the appellant.

7. The Lower Court should have seen that if the respondent

is not the tenant of the appellant, the respondent would have immediately responded to the notice issued by the appellant and non-issuance of the reply notice clearly establish the falsity of the claim of the respondent made by him at a belated stage.

8. The Lower Court should have seen that no prudent person would give the property free of costs for several years and so the Lower Court should have drawn an inference that the contention of the respondent is not correct.

9. The Lower Court should have seen that denying the title of the appellant is itself a ground for eviction and so the Lower Court should ordered for eviction

10. The Lower Court should have seen that the plea of bonafide requirement is clearly established beyond all reasonable doubts and so the Lower Court should have ordered for eviction.

7. The parties to the appeal are herein after referred as per the rank before the trial court as petitioner and respondent for the sake of convenience and to avoid confusion.

8. Now the points for consideration are:

1. Whether the petitioner could establish the landlord and tenant relationship between him and the respondent or not?

2. Whether the petitioner could prove that the respondent committed willful default in payment of rents to the petitioner or not?

3. Whether the petitioner is entitled to evict the respondent from the petition schedule house on the ground of bonafide requirement or not?

4. Whether the decree and order passed by the Trial Court, against the petitioner is sustainable or not?

9. Perused the written arguments filed by the learned counsel for the petitioner.

POINT NO.1:

10. It is the contention of the petitioner that he is the absolute owner of the petition schedule house and he let out the same to the respondent on monthly rent of Rs.2,000/- in the month of October 2011 and the respondent having paid rent for six months committed willful default in payment of rent subsequently, and the petitioner also requires the premises for his personal occupation and that in spite of his demands orally and by issuing notice, the respondent did not evict the schedule premises.

11. On the other hand it is the contention of the respondent that he did not take the petition schedule house on rent from the petitioner as the petitioner is not owner of the petition schedule house and the said house belongs to his sister namely A.Rajeswari and he has been residing in the said house on her permission without any rent and he never paid any rent to the petitioner and the petitioner never demanded him to evict the premises.

12. Coming to the evidence of P.W.1, he deposed that he acquired the petition schedule property in a partition in the year 1987. Though the petitioner did not mention the same in the petition, for the first time in his evidence he stated that the petition schedule property fell to his share in the family partition in the year 1987. P.W.3 who is none other than the elder brother of the petitioner and respondent also

corroborated P.W.1 and stated that the schedule house fell to the share of the petitioner in the family partition. P.W.2 who is an independent witness though deposed in his chief examination about the partition and the ownership of the petitioner over the petition schedule property, in the cross examination he answered for all the questions that he came to know about the partition, leasing of the property and with regard to payment of arrears of rent, through the petitioner.

13. But the respondent as R.W.1 though contended in his counter and also in his chief examination that the petitioner is not owner of the petition schedule property, in the cross examination he admitted that they partitioned all the property on 28.3.1987 in the presence of elders and in the said partition he got a house bearing D.No.12/237 and the house bearing D.No.12/290 fell to the share of his brother Sreenivasulu, but he denied the suggestion that the petition schedule house fell to the share of the petitioner.

14. R.W.2 who is the sister of petitioner and respondent namely Rajeswari deposed that she purchased the petition schedule house from her younger brother/petitioner on 22.3.2001 and the petitioner delivered the possession of the said house and promised to execute a Reg.Sale deed in her favour and since the date of purchase, the respondent has been residing in the said house. In the cross examination she further stated that a document was executed by the petitioner with regard to sale transaction and she also ready to file the said document. But no such document is filed before the court. She

also denied the suggestion that the petitioner did not sell the petition schedule property to her. She also admitted in her cross examination that the petitioner acquired the said property by way of partition.

15. So the entire evidence of P.Ws.1 to 3 and R.Ws.1 and 2 clearly shows that the petitioner is having title over the petition schedule house. But here in this case, since it is filed under A.P. Buildings (Lease, Rent and Eviction Control) Act 1960, the petitioner has to prove not only his ownership over the petition schedule house, but also the landlord and tenant relationship between him and the respondent. But admittedly no document is filed by the petitioner to prove that there is an agreement either oral or written between him and the respondent and the respondent paid rent to the petitioner for any month. Except the oral evidence of the petitioner there is no other evidence to prove the landlord and tenant relationship between him and the respondent. Even the evidence of witnesses i.e P.Ws.2 and 3 who were examined on behalf of the petitioner, does not disclose that the respondent is a tenant of the petitioner and that he paid rent to the petitioner for the petition schedule property, since P.W.2 stated that he came to know through P.W.1 that he is landlord to the house bearing D.No.15/190 and he does not know whether the respondent and the petitioner have entered into an agreement of lease for the petition schedule property and that he came to know through P.W.1 that the respondent did not pay arrears of rent to the schedule property and P.W.3 stated in his cross examination that he do not know whether the petitioner has

given the schedule property to the respondent on rent and also the respondent became defaulter of rent.

14. The learned counsel for the petitioner mentioned in his written arguments that the Lower Court arrived at a wrong conclusion that the petitioner failed to establish that the respondent is tenant of the petition schedule property with surmises and conjectures having properly appreciated and came to conclusion that the petitioner is owner of the petition schedule property.

15. As discussed above, since it is a case under the A.P. Buildings (Lease, Rent and Eviction Control) Act, it is not sufficient for the petitioner to prove his ownership over the petition schedule property and he has to prove the landlord and tenant relationship between him and the respondent. But in this case the petitioner, though could prove his ownership over the petition schedule property, failed to prove the landlord and tenant relationship between him and the respondent. The remedy of the petitioner is otherwise, in an appropriate forum, if at all the respondent occupied his property, but not this Tribunal. Hence the Lower Court has rightly observed that the petitioner failed to establish that the respondent is the tenant of the petitioner.

POINTS NO.2 & 3:

16. It is the contention of the petitioner that the respondent committed willful default in payment of rent and that he required the premises for his personal occupation. Since Point No.1 is answered

against the petitioner concluding that there is no landlord and tenant relationship between the petitioner and the respondent, the question of willful default in payment of rent by the respondent and the eviction of the respondent from the petition schedule house on the ground of personal occupation by the petitioner does not arise.

Hence these points are also answered against the petitioner.

POINT NO.4:

17. Since the petitioner failed to establish the relationship of landlord and tenant between him and the respondent, the petitioner is not entitled to seek eviction of the respondent from the petition schedule house under the A.P.Buildings (Lease, Rent and Eviction Control) Act 1960 and the Lower court has rightly dismissed the petition and absolutely there are no grounds to interfere with the order and decree passed by the Lower court and that the contention of the appellant that the Trial court failed to appreciate the evidence let in by the petitioner and erred in dismissing the petition is not tenable and there is no need to interfere with the findings of the lower court.

Accordingly, point No.4 is also answered against the petitioner.

18. In the result, the appeal is dismissed without costs confirming the order and decree passed by the Court of Junior Civil Judge, Guntakal in R.C.C.No.1/2014 dt.8.3.2017.

Dictated to the Stenographer Grade-II, transcribed by him, corrected and pronounced by me in open Court, this the 19th day of October, 2020.

**Senior Civil Judge
Gooty**

Appendix of evidence

- NIL -

Sr.C.J.