

In the Court of Senior Civil Judge, Dharmavaram,

**Present:-Smt. T. Rajya Lakshmi
Senior Civil Judge, Dharmavaram**

Thursday, the 8th day of February, 2018

R.C.A 1/2017

Between:-

Oleti Venkataramaiah s/o Venkata Swamy, Hindu, aged 64 years,
business, residing at main bazaar, Dharmavaram.

... Appellant/Respondent.

and

Kanumaru Srenivasulu S/o Venkataramana, aged 62 years, Hindu,
business, D.No. 11/971, main bazaar, Dharmavaram.

...Respondent/Petitioner.

The appellant preferred this appeal against the decree and Order
in H.R.C. 1/2015 Dt. 06-01-2017 of the Prl. Junior Civil Judge,
Dharmavaram.

Between;

Kanumaru Srenivasulu S/o Venkataramana, aged 62 years, Hindu,
business, D.No. 11/971, main bazaar, Dharmavaram.

...Petitioner.

Vs

Oleti Venkataramaiah s/o Venkata Swamy, Hindu, aged 64 years,
business, residing at main bazaar, Dharmavaram.

... Respondent.

This appeal came up on 28-12-2017 for final hearing before me in
the presence of Sri D. Visweswara Rao , Sri D. Vijaya Raghavendra and Sri
R. Veeranjanyulu, Advocates for the appellant and of Sri C. Ramakrishna
Reddy, Advocate for the Respondent and the matter having stood over for

consideration, till this day this court delivered the following:-

J U D G M E N T

1. The Appellant/Respondent filed this appeal praying to allow the appeal, set aside the judgment and decree of the trial court in H.R.C. 1/2015 Dt. 6-1-2017, with costs.

2. The parties will be referred for the sake of convenience as arrayed in the petition.

3. The petitioner/respondent herein filed H.R.C before trial court U/sec. 10 of A.P. (Lease, rent and eviction) Control Act, 1960 praying for eviction of the respondent/appellant herein from the petition schedule property and for costs. It is stated in the petition that the petitioner is owner of the petition schedule property. The property is leased out to respondent on oral lease long back and the present rent is paid by the respondent per month is Rs. 400/-. The respondent is doing business in the petition schedule premises and the petitioner came to know that the respondent is using the premises for keeping soda gas cylinders. To the best of his knowledge, the respondent not obtained any permission from authority to keep the soda gas cylinders. He has been doing business without permission and so he is liable to be evicted. The petition schedule property is located in commercial area of Dharmavaram town and in front of petition schedule property, he got building which is useful for commercial purpose. The property which is in front of the petition schedule property was leased out by the petitioner to third parties and now he got it vacated to establish his own business in the said premises. He also intended to merge both properties i.e., petition schedule property and the opposite building and make it into a big shop room to start business.

The petitioner is a handicapped person and except the present petition schedule property and the property situated opposite to the schedule property, there is no other property for him to run business. As such he demanded the respondent to vacate the petition schedule property but the respondent did not vacate the same and filed O.S. 210/2010 on the file of this court seeking permanent injunction against him. The respondent is a defaulter in payment of rents and he did not pay rent from February, 2010 onwards. The respondent took premises for his personal occupation and promised to vacate the premises whenever required by the petitioner but the respondent did not vacate the premises. Hence the petitioner is constrained to file the present petition for eviction of the respondent from the petition schedule property. Therefore prayed to order for eviction of respondent.

4. Counter is filed on behalf of respondent admitting that the petitioner is owner of the petition schedule property and it is leased out to respondent orally long back and the present rent being paid by the respondent is Rs. 400/- and denied the rest of petition averments and it is submitted that the petition schedule property is located towards the south of respondent's residential house and to reach the petition schedule property, one has to reach in a way which is a width of 3 feet and to reach the petition schedule property from the main road, this lane is also joint lane among other residential owners and could not fetch more rent than Rs. 400/- at present. Previously since 30 years ago, the rent has been enhanced from Rs. 100/- to at present Rs. 400/-. In fact, the petitioner demolished his front portion about 8 years back and only the petition schedule property consisting room was let out about 30 years and for the last 8 years, the southern portion of the door number of the petitioner was a dilapidated room and about 8 years back, the petitioner

demanding the respondent to enhance the rent abnormally and refused to receive the rent and attempted to get vacated forcibly. So the respondent having no other way filed O.S. 210/2010 to protect his possession. Even on the date of filing of the suit O.S. 210/2010, respondent filed I.A. 738/2010 requesting the court to permit him to deposit the rents as the petitioner refused to receive the rents not from the October, 2010 and from February, 2010. The petitioner seriously contested the matter and finally the court allowed the petition on 19-09-2014 permitting the respondent to deposit the rents and this respondent deposited an amount of Rs. 22,400/- and again filed petition to deposit 1 year rent from October, 2014 to 2015 by way of advance rent. The petitioner migrated to Hyderabad since March, 2011 and residing there itself with his son who is employee as software Engineer and visits Dharmavaram once in six months and stays for a couple of days as such he does not require petition schedule property for his personal occupancy. In fact remaining portion was completely dilapidated and in a portion of said door number, Tiffin hotel is being run by some third party and he being handicapped person is not in a position to do any business and allegations to that effect is motivated one beyond truth and reliability. At the age of 64 years he is virtually retired person and taking rest with his son who is employee at Pune and another at Hyderabad. This petition is filed as counter blast to the suit O.S. 210/2010. At no point of time, this respondent is defaulter and he is not doing any business in gas cylinders as contended by the petitioner. Therefore prayed to dismiss the petition with costs.

5. During enquiry, on behalf of petitioner, Pw.1 is examined and Ex.P.1 to Ex.P.3 are marked. On behalf of respondent, Rw.1 is examined and Ex.R.1 and Ex.R.2 are marked.

6. Pw.1 is petitioner. His evidence is in terms of petition. Through him, Ex.P.1 to Ex.P.3 are marked. Ex.P.1 is C.C of plaint in O.S. 210/2010 . Ex.P.2 is C.C of written statement in O.S. 210/2010. Ex.P.3 is C.C of affidavit petition and orders in IA. 620/2014.

7. Rw.1 is Respondent. His evidence is in terms of counter. In the cross examination of Pw.1/petitioner, Ex.R.1 and Ex.R.2 photographs of the suit property have been marked on behalf of respondent.

8. After hearing both sides and considering the evidence on record, the trial court allowed the petition with costs directing the respondent to vacate the petition schedule property within the period of 60 days from the date of order and hand over the same to petitioner and if respondent fails to vacate the petition schedule property, the petitioner can obtain the same through process of law.

9. Aggrieved by the said order, the appellant/respondent filed this appeal on the following grounds.

That the order and decree of the lower court is against law and weight of evidence and probabilities of the case.

That the lower court should have held all issues in favour of the appellant and should have dismissed the petition.

That the lower court should have seen that the respondent has failed to establish the case as required under law and so the petition should have been dismissed.

That the lower court should have seen that there are no bonafides on the part of the respondent to seek for eviction of the appellant from the property.

That the lower court should have seen that since there are disputes between the appellant and the respondent, the respondent has filed the case in HRC 1/2015 only to harass the appellant and he does not require the premises for his personal occupation as claimed.

That the lower court should have seen that respondent has failed to establish both the pleas raised by him and so the lower court should have seen that he is not entitled for eviction and consequently the lower court should have dismissed the petition.

That the lower court should have seen that the respondent has failed to establish that he requires the premises bonafide and he requires it for his personal business.

That the lower court should have seen that there is no proof to show that the appellant has ever defaulted in payment of rent and so the lower court should have dismissed the petition.

That the lower court should have seen that merely because the business of the appellant is changed, it does not amount to deviation from the contract which gives right to the respondent to claim eviction.

That the lower court should have seen that respondent has to establish his case of bonafide requirement and in this case, he miserably failed to establish the same.

That the lower court has not at all considered the evidence adduced by the appellant.

That the lower court should have seen that it is for the respondent to prove his case and any weakness on the part of the appellant does not give him a right to claim eviction.

That the lower court has failed to consider the legal aspect of the matter and it is simply carried away by the fact that the respondent is a handicapped person.

That the lower court should have seen that the admission made by Pw.1 if taken into consideration, the suit is liable to be decreed.

That the judgment of the lower court is erroneous, unsound and unsustainable.

Basing on the above grounds, prayed to allow the appeal, set aside the judgment and decree of the lower court in HRC 1/2015 Dt. 6-1-2017 with costs.

10. Heard.

The learned counsel for the appellant submitted that it is admitted fact that the respondent is landlord and appellant is tenant of schedule premises. The schedule premises has been taken by the appellant to use it as godown for storing the material and he has been keeping soda gas cylinders in it and the said gas cylinders contains Carbondioxide and it does not cause any harm to the human life because it does not contain any dangerous substance and so merely because the appellant is keeping soda gas cylinders, he cannot be evicted from the premises. He further submitted that the appellant never committed any default in payment of rents and it is the respondent who refused to take rents since 3 months prior to filing of O.S 210/10 and as the appellant has no account number of the respondent, he has not deposited the rents but to show his bonafides, he immediately filed an application along with the suit seeking permission of the court to deposit the rents and that petition was seriously opposed by the respondent and in

view of it, it has taken some time and however on allowing of application, the appellant deposited the rents. So there is no default on the part of appellant and when he is not defaulter, he cannot be evicted from the suit premises. He further argued that the respondent is aged person and handicapped person and he does not do any business and he does not require the suit premises for personal use. When he does not require it for personal use, the Appellant cannot be evicted from the premises abruptly and the trial court has not considered the above points and dismissed the suit and allowed petition filed by respondent on flimsy grounds. Since the respondent did not prove that he requires premises for personal occupation and that Appellant is defaulter, he is not entitled for eviction and therefore prayed to allow the appeal.

The learned counsel for respondent submitted that the appellant has taken the premises for the purpose of keeping kirana shop material and he also admitted the same but he has been using the premises to store the soda gas cylinders and thereby deviated the terms of tenancy. He further argued that Soda gas cylinders contains some hard substance and it also cause harm and that too the schedule premises is in dilapidated condition as admitted by the appellant and in such situation there is more danger to keep those articles. In spite of having knowledge of it, the appellant still continuing to keep soda gas cylinders violating the terms of contract and therefore he is liable to be evicted. He further submitted that the appellant is willful defaulter in paying the rents. It is his case that it is the respondent refused to receive the rents. If owner refuses to receive the rents, there is a procedure for tenant to deposit the rents into the account of owner but Appellant did not take any such steps. In the absence of taking such step, it has to be taken that he is a defaulter. So the defaulter is not entitled for any relief. He further

submitted that the appellant admitted in the cross examination that he closed his business and he will evict the premises and said admitted evidence itself indicates that he does not requires the suit premises for any more and it is respondent who requires suit schedule premises for his business purpose as admitted by Appellant and therefore Appellant is liable to be evicted from the suit premises and therefore prayed to dismiss the appeal.

11. Now the points for determination are that

- 1. Whether the Appellant/Respondent can be directed to vacate the petition schedule premises?**
- 2. Whether the order passed by the trial court in HRC 1/2015 is sustainable under law?**
- 3. To what relief?**

12. Point No.1:

Whether the Appellant/Respondent can be directed to vacate the petition schedule premises?

It is undisputed fact that the respondent herein/ petitioner is owner of the petition schedule premises and he let out it to the Appellant/Respondent about 25 years ago. By the date of filing of the petition, the rent of the said premises is Rs. 400/- per month. The Respondent/petitioner sought to direct the Appellant/Respondent to vacate the petition schedule premises on the grounds that appellant is defaulter in payment of rent and he is using the premises to store soda gas cylinders violating the terms of tenancy and he (Respondent) requires the petition schedule premises for personal occupation i.e., for business

purpose.

The Respondent/petitioner stated that the Appellant/respondent has not been paying rent since February, 2010 and became defaulter. But the Appellant/ respondent stated that it is the petitioner who refused to receive the rents and he is not defaulter at all and he filed application along with suit seeking permission to deposit the rents into the court. Admittedly the Appellant/Respondent filed O.S. 210/2010 against petitioner for permanent injunction stating that since 3 months prior to filing of the said suit, the Petitioner/defendant therein refused to receive the rents and making efforts to dispossess him from the schedule premises by force without any reasonable cause and he cannot be evicted from the suit premises by the defendant without due process of law. Ex.P.1 is a copy of plaint in the said O.S. The defendant denied the version of Appellant herein/plaintiff therein, stating that the plaintiff is defaulter in payment of rent since February, 2010 and he requested the plaintiff to vacate the premises as he requires it for his personal use and under the guise of vacating the premises, plaintiff stopped the payments of rents and became defaulter. Ex.P.2 is C.C of written statement.

In view of these contentions, it is to be seen whether the Respondent herein refused to receive the rents since 3 months prior to filing of the said suit or it is the Appellant who committed default in payment of rents from February, 2010 onwards. According to Appellant/plaintiff in O.S 210/10,since 3 months prior to filing of the suit, the Respondent/defendant refused to receive the rents. The suit is filed on 4-10-2010. When the 3 months period prior to filing of the suit date is calculated back, the said 3 months would be July, August and September 2010. So according to Appellant, the Respondent refused to take the rent

from July, 2010 onwards. But the Respondent states that the Appellant committed default in payment of rent from the month of February, 2010. The Appellant filed Ex.A.1 small account book in the said suit stating that it shows the rents paid by him to the Respondent. A perusal of said Ex.A.1 small book reveals that the rent has been paid up to 1-1-2010 i.e., January, 2010. No payments are shown from February, 2010 onwards. So Ex.A.1 account book filed by the Appellant itself speak that he paid rent up to January, 2010. Since Ex.A.1 does not show the payments of rents from February, 2010 onwards., it has to be taken that he has not paid rent from February, 2010 onwards and that is the reason why the same is not reflected in Ex.A.1 account book. It is not the case of Appellant that the Respondent received the rents from February, 2010 up to June 2010 and did not make endorsement in Ex.A.1. Even he did not elicit any circumstances from the Respondent in his evidence that he received rents from February, 2010 to June, 2010 and did not make endorsement in Ex.A.1 and thereafter refused to receive the rents. Further the Appellant never denied the version of the Respondent that he did not pay the rent from February, 2010 onwards. When Ex.A.1 small account book filed by the Appellant itself speak that he paid amount up to January, 2010 and Appellant has not denied the version of the Respondent that he has not paid the amount from February, 2010 onwards, it can be safely concluded that the Appellant has not paid the rents from February, 2010 onwards.

The Appellant stated that it is the Respondent who refused to receive the rents. The Appellant never suggested to Respondent that he refused to receive the rents from him and no circumstances are also elicited showing that the Respondent refused to receive the rents. Even it is taken for a movement without any admission that the Respondent refused to receive the rents either from June, 2010 or February, 2010,

there is a procedure that when there is a refusal by the landlord/owner to receive the rents from the tenant, the tenant has to take steps to pay the rent to the owner by way of money order or he has to take steps to get the account number of owner and has to deposit the rent in his account. By saying that the owner refused to receive the rents, he cannot keep quiet without taking the steps contemplated under law. There is no evidence from the Appellant showing that he has taken steps to send the rent to owner i.e., the respondent by way of money order or by depositing the rent in his account by keeping his account number. When he has not taken such steps, it amounts that the Appellant is defaulter in payment of rents from February, 2010 onwards as stated by Respondent. It is true the Appellant filed the petition at the time of filing of the suit, seeking to permit him to deposit the rents and as per the orders in that petition, he deposited the rents in the court as evidenced under Exp3. But filing application at the time of suit seeking permission to deposit the rents and depositing the rents into the court does not make the Appellant/plaintiff's default good because it is established that he committed default from the month of February, 2010 onwards without any bonafide reasons.

The Respondent stated that the Appellant taken premises for personal occupation but he using it to keep soda gas cylinders without permission. Appellant stated in Exp1 plaint that he has been keeping soda gas cylinders in the premises. In his cross examination, he admitted that he took the suit premises on rent to store his kirana shop material. When he took the premises for storing the kirana shop material, he is not supposed to keep soda gas cylinders deviating the terms of tenancy. It is true it is elicited from the Respondent that the gas used for preparation of soda is carbondioxide and carbondioxide cylinders are maintained in most of the public offices where the valuables are available and kept in safe

custody and carbondioxide cylinders are used to put off flames and it does not cause any harm. It may be a fact that soda gas cylinders contain only carbondioxide and do not contain excessive material but it doesn't matter because when the premises is taken for one purpose, the tenant cannot use it for another purpose without consent of owner. It is established that he violated the terms of the tenancy also. Here it is also to be noted that the Appellant in his cross examination admitted that the schedule premises is in dilapidated condition. When admittedly it is in dilapidated condition, it is not safe to keep the gas cylinders.

Respondent stated that he has got property in front of schedule premises and he got it vacated to merge it with schedule premises and to do business in it and so he requires schedule premises and asked Appellant to vacate it. Appellant in his cross examination admitted that he stated to defendant that he will vacate the premises when he requests for his requirement. He also stated that he knows that defendant requires suit property for his personal necessities and he also admitted that the defendant demanded him to vacate the suit property as he needs it for enhancement of medical business by constructing common building in the suit property. So from this admitted evidence of Appellant, the fact remains that the Respondent is in need of suit schedule premises for personal occupation i.e., for enhancement of medical business and so he made request to the Appellant to vacate the premises and Appellant also agreed to vacate the premises. When the Appellant agreed that he will vacate the premises as and when the Respondent requests and Respondent made requests, it is for him to keep up the said promise and vacate the premises. But without keeping the said promise, he filed the suit for injunction.

It is also to be noted here that the Appellant admitted that he closed his business since last 4 years and while denying the suggestion that he is a defaulter of rents and using the premises illegally and so that he has to vacate the premises, he volunteered that he will vacate the suit premises as soon as the stock comes to an end. So according to his own evidence, he closed his business 4 years ago. When he closed his business about 4 years ago, it is quite unbelievable that still the stock is existing in the suit schedule premises. As he admittedly closed his business about 4 years ago, it can be said that he does not require the schedule premises. It appears to me from the circumstances that though there is no necessity for Appellant with the schedule premises, just to harass the Respondent, he is not vacating the schedule premises and withholding it unnecessarily. Since it is established that the Appellant is defaulter in payment of rent from February, 2010 onwards and using the schedule premises for some other purpose deviating the terms of tenancy and further he wants to withhold the property unnecessarily without use and Respondent requires schedule premises for his business, the Appellant can be directed to vacate schedule premises and taking into consideration of all these, the trial court rightly allowed the petition directing the Appellant to vacate the petition schedule premises. Therefore the point is answered against the Appellant.

13. **PointNo.2:**

Whether the order passed by the trial court in H.R.C. 1/2015 is sustainable under law?

In view of my finding on point No.1, it is held that the order/decreed and judgment passed by the trial court in H.R.C 1/15 is sustainable under law.

14. Point No.3:

To what relief?

In the result, the appeal is dismissed with costs.

Dictated to Stenographer, transcribed by him, corrected and pronounced by me in open Court on this the 8th day of February, 2018.

**Senior Civil Judge,
Dharmavaram**

Appendix of evidence
Witnesses examined for

Appellant/ Respondent
None.

Respondent/Petitioner
None

Exhibits marked for Appellant/Respondent
Nil

Exhibits marked for Respondent/ Petitioner.

Nil.

SCJ

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