

C. Devidass

Vs

1. Medisetty Rajanarashiah 2. Smt Tati Anjamma 3. Gollapalli Varalaxmamma

Civil Appeal No. 622 of 1966

(L. M. Sharma, M. H. Kania JJ)

21.02.1989

ORDER

1. The appellant before us is the tenant and respondent 1 is the landlord of the premises in question, situated as Moosakhan Bazar, Secunderabad. Respondents 2 and 3 have not appeared though served. Respondent 3 was the owner of the building in which the suit premises are situated. According to the appellant, respondent 3 sold and conveyed the said building to respondent 2. There is some dispute as to whether the full ownership of the building which was transferred to respondent 2 or only some rights were created therein in favour of respondent 2. What is material is that respondents 2 and 3 sold and conveyed the said building to respondent 1 on July 11, 1977. An eviction petition under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 was filed by respondent 1 against the appellant. There were three grounds on which the petition for eviction was based.

2. The first ground was of wilful default in the payment of rent. The second ground was the denial of the title of the landlord. The third ground was bona fide personal requirement of the landlord. The rent Controller upheld all the three grounds in favour of respondent 1 and passed an order for eviction. On an appeal by the appellant the Appellate Authority held that there was no denial of title. The Appellate Authority further held that the ground of personal requirement of respondent 1 was not proved but upheld the decree for eviction on the ground that the appellant had committed wilful default in the payment of rent. The appellant preferred the revision petition to the Andhra Pradesh High Court which dismissed it upholding the finding of the court below as to wilful default in payment of rent. The present appeal is directed against the decision of the High court.

3. It is common ground that there was default by the appellant in the payment of rent between July 11, 1977 to January 10, 1978 and the case, therefore appears to be covered by the provisions of Section 10 (2) (i) of the Andhra Pradesh Rent act unless the appellant is held to be entitled to claim the benefit of the proviso to sub-section (2) of Section 10 of the said Act. In order to claim the benefit of the aid proviso the appellant must show that although there was default in the payment of rent the said default was not wilful. The only contention urged to show that the default in payment was not wilful is that the appellant claims to have entered into an oral agreement with respondent 3, the original owner of the building in which the suit premises are situated, to purchase the said building. The allegation of the appellant in this connection is that an oral agreement was entered into by the appellant with the husband of respondent 3 on January 18, 1977 for the purchase of the said building. In this connection the appellant had filed a suit being O. S. No. 701 of 1977 in the court of Additional Judge, City Civil Court, Hyderabad for specific performance of the said agreement was not proved and dismissed the suit filed by the appellant. Against the decision of the learned Additional Judge the appellant preferred on appeal to the Andhra Pradesh High Court. The

said appeal was dismissed and in the judgment dismissing the said appeal the High Court held that it was in full agreement with the finding of the learned Additional Judge to the effect that the evidence led by the appellant to establish the oral agreement to purchase the said property did not inspire any confidence. The High Court further pointed out that certain receipts which were exhibited in the suit as Exs. A-7, A-8 and A-9 and relied upon by the appellant were not true but appeared to be cooked up to support the case of the appellant. With these finding the High Court dismissed the appeal of the appellant. A petition for special leave under Article 136 of the Constitution preferred by the appellant against the said judgment has been dismissed in limine. Taking into account all material circumstances appearing on the record, it appears to us that the claim of the appellant to have entered into an oral agreement with the husband of respondent 3 to purchase the said building was not a bona fide claim at all and any default in payment of rent on the basis of that agreement cannot be considered to be anything but wilful.

4. We, therefore, see no reason to interfere with the decision of the High Court impugned before us. In the result, the appeal fails and is dismissed with costs.

Special Leave Petition (Civil) No. 11615 of 1988.

5. The special leave petition is dismissed.

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