ANDHRA PRADESH HIGH COURT

Jeeth Kaur

Vs

P. Kondalamma

(Amareswari, J Rao, CJ.)

18.11.1982

JUDGMENT

Amareswari, J.

1. This second appeal arises out of the judgment of the additional chief judge, citycivil Court, hyderabad dated 21-10-1978 in A.S. No. 66 of 1977 reversing the decree and judgment of the VII Assistant Judge, city civil Court, Hyderabad in O.S. No. 205 of 1973.

2. The plaintiffs are the appellants. The first plaintiff heera Bai is the widow of one Harnam singh. The 2nd plaintiff is the daughter and plaintiffs 3 and 4 and 2nd defendant are the sons. The suit is filed for a declaration of the plaintiff's right of occupancy as tenants of building bearing No. 4-7-649 situate in Esamia bazar, Hyderabad belonging to the first defendant kondalamma.

3. Harnam singh, the husband of the first plaintiff was inducated into the suit building as tenant by the predecessor-in-title of defendant No.1 plaintiffs 1 to 4 and defendant No. 2 were residing with Harnam singh in the suit builing paying the rents regularly. Harnam singh died on 18-9-1957. Even after the death of Harnam singh, plaintiffs and defendant No.2 continued to reside in the suit building. Defendant No. 2 was paying the rent up to November 2 along with his family shifted to a police quarter allotted to him by the Government plaintiffs 1 to 4 continued to reside in the suit building. Defendant No. 1 received the rent till November.1967. after defendant No. 2 shifted from the suit building when the rent was tendered by plaintiffs 1 to 4 for December. 1967 defendant No. 1 refused to receive the rent. After issuing a notice to defendant No. 1 to specify the bank in which the rent has to be deposited for which there was no reply, the first plaintiff filed R.c. No. 234 of 1968 in the Court of the rent controller, Hyderabad under S. 8 of the Andhra pradesh buildings (lease, Rent and Eviction) control Act and the same was allowed on 25-3-1970. Defendant No. 1 preferred Rent Appeal No. 516 of 1970 and it was allowed on 26-12-1971 holding that there was no jural relationship of tenant and landlord between the parties. Plaintiff No. 1 filed C.R.P NO. 609 of 1972 in the High Court challenging the decision in the rent appeal and the same was dismissed on 7-2-1973 with a direction that plaintiff No. 1 may

withdraw the rents deposited by her. Notwithstanding the direction, the first plaintiff has not withdrawn the amounts from the Court of the Rent controller. After the decision of the High Court plaintiffs 1 to 4 filed the present suit for a declaration of their rights of occupancy contending under S. 8 of the Rent decision is void and inoperative and that the plaintiffs must be deemed to be tenants after the death of harnam singh.

4. Defendant No. 2 did not contest the suit Defendant No.1 opposed the suit contending that after the death of harnam singh, Defendant No.2 became the tenant the plaintiffs 1 to 4 were not residing with harnam singh at the time of his death and the plaintiff No. 1 started claiming tenancy only after defendant No. 2 left the premises Defendant No. 1 further contended that the decision under the provisions of the Rent control Act the plaintiff nO. 1 is not the tenant is final and the same cannot be agitated in a civil Court. She also contended that since the plaintiffs are claiming tenancy through the deceased tenant late harnam singh which claim has already been rejected, it does not make any difference even if the plaintiffs 2 to 4 and defendant No. 2 were not parties to the Rent control proceedings initiated by the first plaintiff and that the decision of the Rent controller is binding on plaintiffs 2 to 4 and defendant No. 2 on a consideration of the material on record the trial Court found that the decision in Rent appeal No. 516 of 1970 is not final. That the plaintiffs are entitled to have the right of occupancy established in the civil Court and that the suit is maintainable that the plaintiffs must be deemed to be tenants after the death of harnam singh and that they were continuously depositing the rents. The trial Court specifically found that Harnam singh was inducted into possession by the mother and stepmother of defendant No. 1 as tenant that plaintiffs 1 to 4 and defendant No. 2 lived with harnam singh for 44 years that defendant No.1 became the owner of the property under a settlement deed by her mother and step-mother and that there was no further rental deed either between Harnam singh and defendant No. 1 or between defendant No. 2 and defendant No. 1 after the death of Harnam singh. The trial Court rejected the plea of defendant No. 1 and defendant No. 2 the Trial Court also observed that the evidence of P.Ws. 1 and 2 that plaintiffs 1 to 4 paid their portion of rent of the suit building to defendant No. 2 and he paid the rent to defendant No. 1 has not been challenged by defendant No. 1 and that it is admitted that plaintiffs and defendant No. 2 resided in the same building with late harnam singh, that after defendant No. 2 shifted to the police quarters, plaintiffs 1 to 4 continued to reside in the suit building by depositing the rent in the rent control Court under Exs. A-4 to A-37 and hence plaintiffs 1 to 4 are tenants within the meaning of sub sec. (9) of S. 2 of the Rent control Act. On these findings, the trial Court decreed the suit.

5. Defendant No. 1 carried the matter in appeal the appellate Court found that late Harnam singh was the tenant of the suit building till his death in sept. 1957 that after his death, there was a fresh agreement of tenancy between defendant No. 1 and defendant No. 2 that on account of the fresh agreement of tenancy, plaintiffs cease to be the tenants, the when defendant No. 2 vacated the

premises in 1967, the tenancy was determined and plaintiffs 1 to 4 cannot be deemed as tenants with in the meaning of S. 2 (ix) of the Rent control Act. The Appellate Court further held that though the decision in rent Appeal No. 516 of 1970 Ex. B-2 does not operate as res judicata, is binding on hte parties. On these findings the appellate Court reversed the decree of the trial Court and dismissed the suit of the plaintiffs. Hence this appeal by the plaintiffs.

6. Mr. M.S. Narayanacharyulu, the learned counsel for the appellants raised three contentions:

(1) the plaintiffs 1 to 4 are statutory tenants within the meaning of S. 2 (ix) of Andhra pradesh Buildings (lease, rent and Eviction) control Act, hereinafter called the Act and their rights cannot be terminated and wiped out except in accordance with the provisions of the Act. Hence, the decision of the appellate Court that the plaintiffs cannot be deemed to be tenants as there was a fresh tenancy created in favour of defendant No. 2 by virtue of an agreement between defendant No. 1 and defendant No. 2 is unsustainable.

(2) The finding of the appellate Court that there was a fresh agreement of tenancy between defendant No. 1 and defendant No. 2 subsequent to the death of harnam singh is based on no evidence.

(3) the decision in Rent appeal No. 516 of 1970 Ex. B-2 is confirmed by the High Court in C. R.P. No. 609 of 1972 Ex. B-1 is not final and it does not operate as res judicata.

7. On the other hand it is contended by Mr. Mr. S.L. chennakesava Rao, the learned counsel for the respondents defendants that after the death of Harnam singh, defendant No. 2 executed a fresh tenancy agreement in favour of defendant No.1 as found by the Appellate Court and this being a finding of fact, it cannot be challenged in a second appeal. He further submitted that since the plaintiffs do not come under any of the persons mentioned in S. 2 (ix) of the Act, they cannot inherit the right of tenancy from defendant No. 2 and that Exs. B-1 and B-2 the judgment of the High Court and the decision of the appellate authority under the Act are final and they operate as res judicata between the parties.

8. We will take up the first contention namely, whether the plaintiffs ar statutory tenants wihtin the meaning of S. 2 (ix) of the Act. Section 2 (ix) of hte Act defines "tenant" as follows:-

"2 (ix) "tenatn" means any person by whom or on whose account rent is payable for a building and includes the surviving spouse or any son or daughter, of a deceased tenant who had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant and a person continuing in possession after the termination of the tenancy in his favour".

From this definition, it is clear that on the death of a tenant, the surviving spouse or any son or daughter who was living with the tenant as a member of his family up to his death in hte building

is a tenant. Each one of the persons mentioned namely, the spouse sone or daughter is recognised bythe statute as a tenant after the death of the original tenant. In fact the decisions have given a wide interpretation and an extended meaning to this section and construed living with the original tenant as a member of his family up to his death as a tenant even though he or she is neither the surviving spouse, the son or daughter (vide R. Ramanujan v. D. Venkat Rao,). The relevant observations are as follows (para 29):-

"Where a tenatn dies his legal heir is entitled to claim tenancy rights by operation of law in respect of the premises for which the deceased was the tenat, even though he does not come under any of the categories of persons enumerated in S. 2 (ix) of the Rent control Act. This right is conferred on a statutory tenant by virtue of the incident of heritability just as it is available in the case of a contractual tenant".In this view the learned Judges held that one Ramanujam who was the nepew of the deceased tenant Rajaiah was entitled to claim tenancy rights even though he does not fall under any of the categories of persons mentioned in S. 2 (ix) of the Act. But in the present case we need not go to that extent as plaintiffs 1 to 4 are no other than the widow daughter and the two sons of the deceased tenant harnam singh falling within the categories of persons mentioned in the section. Both the courts have concurrently found that plaintiffs 1 to 4 and defendant No. 2 were living in the suit house along with harnam singh up to his death. In fact the appellate Court which reversed the decision of the trial Court had also held that plaintiffs 1 to 4 fall under the categories specified in the definition of a tenant, but for the fact that there was a fresh agreement of tenancy between defendant No. 1 and defendnt No. 2 which aspect we will consider shoetly. We therefore hold that plaintiffs 1 to 4 being the widow, daughter and sons of the deceased harnam singh are tenants within the meaning of S. 2 (ix) of the Act. Each one of them has an independent right to claim as a tenant as the statute recognises each one of the persons mentioned therein as a tenant.

9. It is next to be seen whether such a right can be extinguished by virtue of an agreement between defendant No. 1 and defendant No. 2 the rights of a tenancy under the Act can be put an end to only under the provisions of the Act. It is no one's case that the tenancy of plaintiffs 1 to 4 is determined and in fact no such termination can be done except in accordance with the provisions of the Act. Hence even if there is an agreement between defendant No. 1 and defendnt No. 2 to which admittedly plaintiffs 1 to 4 are not parties, their rights are not extinguished. There is no evidence whatsoever that plaintiff 1 to 4 have given up their rights. On the other hand, it is the admitted case that subsequent to the death of Harnam singh, plaintiffs 1 to 4 were living in hte suit house paying the rents regularly, that after defendant No. 2 vacated the house and shifted to the police quarters allotted to him plaintiffs continued to live and offered to pay the rent for December 1967 and the same was refused by defendant No. 1 as a result of which the first plaintiff had to file a petition in the Court of the Rent controller under S. 8 Cl. (5) of the Act for

depositing the rents and in fact deposited the same as evidenced by Exs. A-4 to A-37 We have therefore no hesitation in holding that the rights of plaintiffs 1 to 4 are not extinguished.

10. We next deal with the question whether the finding of the Appellate Court that there was a fresh agreement of tenancy between defendant No. 1 and defendant No. 2 subsequent to the death a Harnam singh is supported by evidence. It is true as contended by the learned counsel for the respondents that even if there is the slightest evidence in regard to this the correctness of this finding cannot be challenged. The pleadings disclose that the building originally belongs to one satyamma and Devamma, the mother and step-mother of the first defendant and Harnam singh was their tenant for 44 years. The first defendant got this property under settlement deed from satyamma and Devamma. It is the case of the plaintiffs that there was no written agreement of tenancy between defendant No. 1 and Harnam singh or between defendant No.1 and defendant No. 2 Though there is no fresh agreement of tenancy, it cannot be disputed that defendant No. 1 became landlord subsequent to the settlement deed as there was attornment of tenancy. The evidence of plaintiffs 1 and 2 examined as Pws 1 and 2 is to the effect that after the death of harnam singh, plaintiffs 1 to 4 were giving their portion of rent to defendant No. 2 who was in turn paying the rent to defendant No. 1 Defendant No. 2 is no other than the son of Harnam singh. Being a male member, he must have been paying the rent on behalf of the family to defendant No. 1 the evidence of PWs 1 and 2 about this arrangement was not challenged by the defendants. The only evidence adduced is that of DW 1 the husband of the first defendant. He says that there was an oral tenancy between the first defendant and the 2nd defendant. This evidence is rightly not relied upon by both the courts below. Though the case of defendant No. 1 is that defendant No. 2 had executed a written agreement after the death of harnam singh, the written agreement was not filed into Court. On these findings, the trial Court found that there was no fresh tenancy between defendant No. 1 and defendant No. 2 either oral or written. But the Appellate Court curiously observed that defendant No. 2 admitted in the prior litigation that he executed a rent agreement and therefire it must be presumed that there was written agreement. The Appellate Court rlies upon Ex. B-2 the Judgment No. 2 had admitted in his evidence in R.C. No. 548 of 1958 that he had executed a rental agreement was not returned to him. The evidence given by defendant No. 2 in R. C. No. 548 of 1958 is not filed in this case. Even if defendant No. 2 had stated so in R. C. No. 548 of 1958 which was a petition filed for eviction, it does not amount to evidence in this case. The other circumstances relied upon by the appellate Court was that Ex. B-1 the judgment of th High Court in C.R.P. No. 609 of 1972. The counsel for the first plaintiff in the rent deposit petition contended that the lease deed executed by defendant No. 2 must be construed as one executed by him as manager of the family for and on behalf of the family. We have gone through Ex. B-1 judgment right from the begining the case of the first plaintiff, who was the petitioner there in was that she was a statutory tenant after the death of harnam singh, that there was no fresh agreement of tenancy subsequent tot he death of Harnam

singh. Alternatively it is said that even if defendant No. 2 entered into an agreement it must be construed as one executed on behalf of the members of the family. It was only an alternative contention put forward by the counsel at the time of arguments and the same can never be treated as an admission of the party. The appellate Court was therefore clearly wrong in observing that defendant NO. 2 as well as plaintiff have admitted that there was a fresh contract of tenancy between defendant No. 2 and defendant NO. 1 the finding of the appellate Court is based on this supposed admission and not on any evidence. As we noticed earlier an alternative contention can never amount to an admission by the parties the finding of the appellate Court that there was a fresh agreement between defendant NO. 1 and defendant No. 2 is wholly unsustainable as it is not supported by any evidence. In fact DW 1's evidence is that there was an oral tenancy and the same was not accepted by both the courts. We therefore hols that subsequent to the death of Harnam singh, there was no fresh contract of tenancy in respect of the suit building between defendant No. 1 and defendant NO. 2

11. The last contention urged on behalf of the appellants is that Exs. B-1 and B-2 (does not) operate as res judicata. After defendant No. 2 moved to the police Quarters which was allotted to him by the Government in November 1967 plaintiffs tendered the rent for December 1967. The first defendant refused to receive the same. A notice was issued to the first defendant to specify the bank into which the rent may be deposited for which there was no reply. Thereupon the plaintiff filed an application in the Court of the Rent controller R. C. No. 234 of 1968 for permission to deposit the rents. This petition was filed only by the first plaintiff. The petition was opposed by defendant no. 1 on the ground that the plaintiff was not her tenant. As the relationship of tenant and landlord was denied by the first defendant, the rent controller had to decide the question whether such a relationship exists or not in order to give relief in the petition filed under S. 8 (5) as the provisions of the rent control Act apply only when there is a jural relationship of landlord and tenant between the parties. This question is incidental to the main relief prayed for. The rent controller held that there was the relationship of landlord and tenant between the parties. This question is incidental to the main relief prayed for. The Rent controller held that there was the relationship of landlord and tenant between the parties and allowed the application. On appeal the decision of the Rent controller was reversed and the order of the Appellate Authority was confirmed by the High Court in Ex. B-1. Now the contention of the respondents is that Exs. B-1 and B-2 operate as res Judicata. It is submitted by Mr. M.S. Narayanacharyulu, the learned counsel for the appellants that the decision of the authorities under the rent control Act is only on a jurisdictional issue and a finding on a juridictional issue can never be final. We find considerable force in the submission of the learned counsel for the appellants. The main relief sought for by the tenants was for depositing the rents on the ground that the landlord refused to receive the same. In order to give that relief, the Rent control Court must first have jurisdiction as it can adjudicate disputes only between a landlord and a tenant.

Since the relationship is denied by the landlord, the Rent controller had decided that question incidentally. This is not the main relief for which the application is filed. In fact, it is not a dispute which is exclusively triable by the Tribunals under the Act. The dispute has to be decided as incidental to the granting of the main reliefs. The necessary condition for exercise of Jurisdiction by the Rent controller is the existence of relationship of landlord and tenant. The rentauthorities have no power to decide a dispute which is not between a landlord and tenant. Therefore the decision on the question whether the relationship of landlord and tenant exists is a decision regarding jurisdictional facts and such a decision is neither conclusive nor final. In such circumstances, the jurisdiction of the civil Court to entertain a suit in which the question of jural relationship of the landlord and tenant arises is not ousted. Since the said decision is not final it can never operate as res judicata between the parties. In fact if we examine the provisions of the Act, there are only five reliefs that can be granted under the rent control Act. One is fixation of fair rent and increase thereof under Ss. 4, 5 and 6, the second is permission to deposite rents in the Court under S. 8 (5) the third is to order eviction under S. 10; the fourth is to direct recovery of possession by the landlord for repairs under S. 12 and the fifth is to order restoration of amenities when they are unjustly withheld, under S. 14 of the Act. The Rent Authorities cannot grant the reliefs of declaration of occupancy rights. It is submitted by Mr. Chennakesava Rao that the orders of the Rent authorities are final and they cannot be called in question in any Court of law under Cl. (Iv) of S. 20 of the Act. It is true that Cl. (Iv) of S. 20 says that the decision of the appellate authority and the rent controller subject to such decision are final and cannot be called in question in any Court of law. But the decisions contemplated under this section are decisions in cases which are exclusively triable by the rent Tribunals and not on jurisdictional issues. In respect of the reliefs that can be granted by the Tribunals under the Rent Act, their decisions are final. But in respect of a relief which cannot be granted under the provisions of the Rent Act and where questions are decided incidentally they cannot be considered as final so as to oust the jurisdiction of the civil Court nor do such findings operate as res judicata as the decisions are not final. In fact the appellate Court held that the suit is maintainable and that Exs. In fact the Appellate Court held that the suit is maintainable and that Exs. B-1 and B-2 do not operate as resjudicata, but however held that they are binding between the parties. This finding of the appellate Court in our opinion is clearly illegal apart from this we may also notice that only the first plaintiff is a party to Exs. B-1 and B-2 the proceedings under the Rent Act and the said decision cannot bind the plaintiffs 2 to 4 who have an independent right of tenancy as the sons and daughter of Harnam singh. Exs. B-2 and B-3 do not show that the first plaintiff filed the pwtition on behalf of plaintiffs 2 to 4 also. The learned counsel for the respondents submitted that PW 2 the second plaintiff stated in her evidence that the Rent control proceedings were filed on their behalf also. PW 2 stated in a general way. But this statement is not correct in view of EXs. B-1 and B-2 and PW 2 being the daughter and placed in a similar position might have stated that

her mother filed the proceedings on her behalf also. Even then plaintiffs 3 and 4 the sons of harnam singh have nowhere admitted that they were parties to the proceedings under Exs. B-2 and B-3 or that the proceedings were instituted on their behalf also.

12. For all the above reasons we allow the second appeal set aside the judgment and decree of the appellate Court confirm the Judgment and decree of the trial Court and decree the plaintiff suit. In the circumstances we direct the parties tobear their own costs.

13. Appeal allowed.