# M/S. Boorugu Mahadev & Sons & Anr vs Sirigiri Narasing Rao & Ors on 18 January, 2016

## Equivalent citations: AIR 2016 SUPREME COURT 433, 2016 (3) SCC 343, (2016) 1 MAD LJ 809, (2016) 4 MAD LW 543, (2016) 2 ANDHLD 103, (2016) 1 RENTLR 125, (2016) 4 CAL HN 164, (2016) 1 ICC 1030, (2016) 2 ALL WC 1610, (2016) 1 RENCR 94, (2016) 4 ALL RENTCAS 490, (2016) 3 CIVILCOURTC 346, (2016) 1 LANDLR 333, (2016) 1 SCALE 338, (2016) 1 WLC(SC)CVL 482, (2016) 159 ALLINDCAS 245 (SC), (2016) 2 PAT LJR 250, (2016) 2 JLJR 141, (2016) 117 ALL LR 473, 2016 (1) KLT SN 130 (SC), 2016 (3) KCCR SN 311 (SC)

## Author: Abhay Manohar Sapre

## Bench: Abhay Manohar Sapre, J. Chelameswar

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.167 OF 2007

M/s Boorugu Mahadev & Sons & Anr. ……Appellant(s)

VERSUS

Sirigiri Narasing Rao & Ors. ……Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is filed against the final judgment and order dated 06.09.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Civil Revision Petition No. 5228 of 2002 whereby the High Court allowed the revision petition filed by the respondents herein and set aside the judgment dated 17.09.2002 passed by the Additional Chief Judge, City Small Causes Court, Hyderabad in R.A. No. 93 of 1998 and restored the judgment dated 31.12.1997 passed by the Principal Rent Controller Secunderabad in R.C. No. 165 of 1993.

2) In order to appreciate the issue involved in this appeal, which lies in a narrow compass, it is necessary to set out the relevant facts in brief infra.

3) The premises bearing No. 9-3-692 to 694, Regimental Bazar, Secunderabad (hereinafter referred to as "suit premises" was purchased jointly by the predecessors of the appellants herein under a registered sale deed dated 28.07.1904 from Sirigiri Yellaiah, and others, which they sold in discharge of pre-existing mortgage debt to avoid court attachment in O.S. No. 178 of 1900 on the file of the District Court. Since the date of sale, the respondents' predecessors continued to occupy the suit premises and thus became the tenants of the appellants' predecessors-in- title on a monthly rent of Rs.10/- in addition to payment of property taxes, conservancy and electricity charges etc. under an agreement dated 01.08.1904. The said agreement was incorporated in a book maintained by the appellants' predecessors in the regular course of business and was duly signed by the respondents' predecessors by way of rent every month. After the death of Sirigiri Vishwanadham, i.e., respondents' predecessor, his four sons became the tenants and continued to pay monthly rent at the rate of Rs.75/- besides other charges. The respondents are the grand children of late Sirigiri Vishwanadham, who continued to occupy the suit premises as the tenants of the appellants. However, the respondents stopped paying rent w.e.f. 01.06.1987 to the appellants. Since the rent was not being paid in spite of repeated requests and demands, a legal notice was sent by the appellants to the respondents on 22.07.1992, to which interim reply was sent on 03.08.1992 followed by a detailed reply on 30.08.1992 and thereafter there were exchange of legal notices ensued between the parties.

4) Since despite service of the legal notice sent by the appellants to the respondents demanding arrears of rent, the respondents failed to comply with the demand, the appellants filed Eviction Petition being R.C. No. 165 of 1993 before the Principal Rent Controller, Secunderabad against the respondents under Section 10 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as "the Act"). The eviction was sought essentially on the grounds, viz., default in payment of monthly rent from 01.06.1987 till the time of eviction petition and secondly denial of the appellants' title to the suit premises.

5) Denying the allegations made in the eviction petition, the respondents stated that the sale deed dated 20.07.1904 under which the ancestors of the appellants had purchased the suit premises was a mortgage with a right of re-conveyance whereas the respondents' predecessors continued to be the owners of the suit premises. According to them, the suit premises was offered only as a security for borrowed amount and subsequently their forefathers discharged the liability of borrowed amount. However, due to some reasons, the respondents' forefathers could not obtain the re-conveyance of the suit premises in their name, though ownership of suit premises remained with the respondents' forefathers. It was also averred that for the last fifty years, there was no payment of rent either by them or their forefathers in respect of the suit premises whereas their forefathers paid the property tax etc. as the owners. It was also averred that the appellants fabricated the records to file an eviction petition against the respondents.

6) Vide order dated 31.12.1997, the Rent Controller dismissed the petition filed by the appellants.

7) Challenging the said order, the appellants filed first appeal being R.A. No. 93 of 1998 before the Additional Chief Judge, City Small Causes Court at Hyderabad.

8) By order dated 17.09.2002, the Additional Chief Judge, Small Causes Court allowed the appeal and while setting aside the order of the Rent Controller directed the respondents to vacate and handover the vacant possession of the suit premises to the appellants within two months from the date of the judgment. It was held by the appellate Court that the appellants' predecessors were the owners of the suit premises on the strength of sale deed-Ex.P.7. It was also held that the sale in question in relation to the suit premises between the parties was not a transaction of mortgage as alleged by the respondents but it was an outright sale in favour of the appellants' predecessors-in-title. It was also held that the respondents failed to adduce any evidence to prove that the transaction of sale of suit premises was a mortgage and the borrowed amount having been paid, the mortgage was redeemed. It was also held that the respondents' predecessors were, therefore, in possession of the suit premises as tenants and later became the appellants' tenants by operation of law. It was also held that the respondents failed to pay the arrears of rent from 01.06.1987 and hence they committed willful default in payment of rent rendering themselves liable to be evicted from the suit premises under the provisions of the Act.

9) Against the said judgment, the respondents herein filed revision petition being C.R.P. No. 5228 of 2002 before the High Court.

10) Learned Single Judge of the High Court, by impugned judgment dated 06.09.2005, allowed the revision petition filed by the respondents herein and set aside the judgment of the Additional Chief Judge, Small Causes Court and restored the order of the Rent Controller.

11) Aggrieved by the said judgment, the appellants have preferred this appeal by way of special leave.

12) Heard Mr. B. Adinarayan Rao, learned senior counsel for the appellants and Mr. A.T.M. Ranga Ramanujam, learned senior counsel for the respondents.

13) Mr. B. Adinarayana Rao, learned senior counsel appearing for the appellants, while assailing the legality and correctness of the impugned order urged two submissions. In the first place, he submitted that the High Court erred in allowing the respondents' revision petition and thereby erred in interfering in its revisionary jurisdiction by upsetting a well reasoned findings of facts recorded by the first appellate Court in favour of the appellants. He further submitted that the first appellate Court while hearing the appellants' appeal was within its jurisdiction to probe into all issues of facts and the evidence and record its finding de hors the findings of the Rent Controller and once any finding of fact was recorded by the first appellate Court then such finding is binding on the High Court while hearing the revision against such judgment of the first appellate Court. Learned counsel pointed out from the impugned judgment that the High Court in this case decided the revision like the first appeal without keeping in mind the subtle distinction between the revisionary and the first appellate jurisdiction thereby committed a jurisdictional error in rendering the impugned judgment.

14) In the second place, learned senior counsel for the appellants submitted that even otherwise, there was no justification on the part of the High Court on facts to have reversed the well reasoned findings of fact recorded by the first appellate Court because, according to the learned counsel, the appellants were able to prove with adequate evidence adduced by them that firstly, they were the

owners of the suit premises and secondly, there was a relationship of landlord and tenant between the predecessor-in-title of the appellants and the respondents' predecessor-in- title in relation to the suit premises. It was also urged that in the eviction petition filed before the Rent Controller under the Act, the issue of title to the suit premises could not be gone into like a regular title suit yet the appellants adduced adequate evidence to prove their title over the suit premises and the relationship of landlord and tenant between the parties whereas the respondents failed to prove that the sale of suit premises in favour of the appellants' predecessors was not a sale but was a transaction of mortgage and that their predecessor-in-title redeemed the alleged mortgage by repaying the debt.

15) In support of his submissions, learned counsel relied upon the decision of the Constitution Bench of this Court in Hindustan Petroleum Corporation Limited vs. Dilbahar Singh, (2014) 9 SCC 78.

16) In contra, Mr. A.T.M. Ranga Ramanujam, learned senior counsel for the respondents, supported the impugned judgment and prayed for its upholding calling no interference therein.

17) Having heard learned counsel for the parties and on perusal of the record of the case, we find force in the submissions of the learned counsel for the appellants.

18) The Constitution Bench of this Court settled the law relating to exercise of jurisdiction of the High Court while deciding revision in rent matters under the Rent Control Act in the case of Hindustan Petroleum Corporation Limited (supra). Justice R.M. Lodha the learned Chief Justice speaking for the Bench held in para 43 thus:

> "43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High

Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

19) It is also now a settled principle of law that the concept of ownership in a landlord-tenant litigation governed by Rent control laws has to be distinguished from the one in a title suit. Indeed, ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else to evict the tenant and then to retain control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. (vide Sheela & Ors. vs. Firm Prahlad Rai Prem Prakash, (2002) 3 SCC 375).

20) Coming now to the facts of this case, keeping in view the principle of law laid down in the aforementioned two cases and on perusal of the order of the first appellate Court, we find that the first appellate Court properly appreciated the facts and evidence adduced by the parties and on that basis recorded all necessary findings (detailed above) in favour of the appellants. This the appellate Court could do and, in our opinion, rightly did in the facts of this case.

21) Likewise, when we peruse the impugned order, we find, as rightly urged by the learned counsel for the appellants, that the High Court did not keep in mind the aforesaid principle of law laid down by the Constitution Bench in the case of Hindustan Petroleum Corporation Ltd. (supra) while deciding the revision petition and proceeded to decide the revision petition like the first appellate Court. The High Court as is clear from the judgment probed in all the factual aspects of the case, undertook the appreciation of whole evidence and then reversed all the factual findings of the appellate Court and restored the order of the Rent Controller. This, in our view, was a jurisdictional error, which the High Court committed while deciding the revision petition and hence it deserves to be corrected in this appeal. In other words, the High Court should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate Court while deciding the first appeal. It was, however, not done and hence interference in this appeal is called for.

22) That apart, we find that the appellants were able to prove their ownership through their predecessor-in-title on the strength of sale deed (Ex-P.6/7) of the suit premises whereas the respondents failed to prove their defence. Indeed, the burden being on them, it was necessary for the respondents to prove that the sale in favour of the appellants' predecessor-in-title of suit premises was a transaction of mortgage and not an outright sale. Since the respondents did not adduce any documentary or oral evidence to prove their defence, the first

appellate Court was justified in allowing the eviction petition. In our view, the evidence adduced by the appellants to prove their title over the suit premises was sufficient to maintain eviction petition against the respondents and it was, therefore, rightly accepted by the first appellate Court.

23) As observed supra, the first appellate Court having recorded categorical findings that the relationship of landlord-tenant was proved and secondly, the respondents had committed a willful default in payment of monthly rent and its arrears from 01.06.1987, these findings were binding on the High Court while deciding the revision petition. It was more so when these findings did not suffer with any jurisdictional error which alone would have entitled the High Court to interfere.

24) Learned counsel for the respondents lastly argued that there was an encroachment made by the appellants on the suit premises and document (Ex-P-

6) was inadmissible in evidence, hence the eviction petition was liable to be dismissed on these two grounds also. These submissions, in our considered view, deserve to be rejected at their threshold because the same were not raised in the written statement filed by the respondents before the Rent Controller and nor were urged at any stage of the proceedings. We cannot, therefore, allow such factual submissions to be raised for the first time in this appeal.

25) In the light of foregoing discussion, the appeal succeeds and is hereby allowed. The impugned judgment is set aside and that of the judgment of the first appellate Court dated 17.09.2002 in R.A. No. 93 of 1998 is restored. As a consequence thereof, the eviction petition filed by the appellants against the respondents in relation to the suit premises is allowed. The respondents are, however, granted three months' time to vacate the suit premises from the date of this order subject to furnishing of the usual undertaking in this Court to vacate the suit premises within 3 months and further the respondents would deposit all arrears of rent till date at the same rate at which they had been paying monthly rent to the appellants (if there are arrears) and would also deposit three months' rent in advance by way of damages for use and occupation as permitted by this Court. Let the undertaking, arrears of rent, damages for three months and cost awarded by this Court be deposited within 15 days from the date of this order.

26) The appeal is accordingly allowed with cost which quantify at Rs.5000/- to be paid by the respondents to the appellants.

.....J. [J. CHELAMESWAR] .....J. [ABHAY MANOHAR SAPRE] New Delhi, January 18, 2016.

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