

HON'BLE THE ACTING CHIEF JUSTICE SRI C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5703 of 2018

ORDER:

1) Aggrieved by the order dated 19.07.2018 passed in I.A.No.239 of 2017 in O.S.No.153 of 2017 on the file of the Principal Junior Civil Judge at Vijayawada, wherein an application filed under Order 15-A read with Section 151 of the code of Civil Procedure (for short "the CPC"), to direct the petitioner herein to deposit rent of Rs.32,000/- and in the event of default in making deposit, to strike of the defence, was allowed, the present Revision came to be filed.

2) For the sake of convenience, the parties hereinafter will be referred to as arrayed in the impugned order.

3) The averments in the affidavit filed in support of the Petition show that the plaint schedule property was owned by one Shaik Mastan Saheb. Such property is situated in R.S.No.368 at Wynchipet, Vijayawada, as per the survey record, old survey No.1692 is in an extent of 1999 sq. feet. In the said property 72 sq. feet of site was left towards Ashifkhan. The Wakf was Gazetted in the year 1962 for the aforesaid site to perform Moharram festival every year and permission was obtained from the police authorities and Municipality by paying wakf fund. It is said that late Shaik Mastan

Saheb bequeathed his part of the property in Dr.No.8-6-1, Old Assessment No.10328 (New Assessment No.70249), Ward No.9, Wynchipet, Vijayawada in Run Hussaini Lanka Peer Panja. During his life time, the said Mastan Saheb executed a Will for the welfare of his family. The averments in the affidavit further show that the defendant herein used to pay the rent to Mastan Saheb during his life time and after his death, the wife of Mastan Saheb viz., Katijubi used to receive the rents. During the said period, the plaintiffs' father (Muthavalli) was a minor and one Dada Saheb used to lookafter and maintain the Run Hussaini Lanka Peer Panja. After the death of Dada Saheb, the plaintiffs' father used to collect the rents. It is said that the petitioners' father registered the property in the names of the petitioners under a registered partition deed dated 23.08.2014. After the expiry of their father, the respondent failed to pay monthly rents to them. It is said that the respondent/defendant is a tenant of the plaint schedule property and is running a Hotel business on a monthly rent of Rs.4000/- per month from 2016. In spite of repeated demands made for payment of rents, the defendant neither paid the amount nor enhanced the amount. A legal notice was issued by way of registered post. Though the said notice was received, the respondent failed to pay the arrears of rent of Rs.4,000/- per month from 2016 onwards. It is said that the plaint schedule premises is required for personal

occupation and hence filed the present suit. Pending the said suit, the present application is filed under Order 15-A read with Section 151 of the CPC, to direct the petitioner herein to deposit rent of Rs.32,000/-, which is due from June 2016.

4) A counter came to be filed denying the allegations made and further stating that the plaint schedule property is part and parcel of the entire property belonging to Dargha in the name "Run Hussaini Peera Panja Mujavars" and the petitioners are not the exclusive owners of the suit schedule property. It is said that as per the lease agreement dated 21.11.2016, the agreement was concluded as per the Gazette notification issued by the Wakf Board. It is said that even as per the agreement the tenancy was not commenced from 27.07.2016 but it commenced on 21.11.2016. It is stated that since the property is a wakf property and as there is a dispute with regard to ownership, unless and until the ownership is decided, the petitioners are estopped from depositing the rents. It is further stated that as per the terms and conditions of the lease deed, the lessors have to pay the amount to the respondent unless and until the advance amount is exhausted. Hence, the right to seek deposit of rents would not arise. Since there is dispute with regard to ownership, until the ownership is decided the right to seek for deposit of rent will not arise. Considering the arguments advanced, the trial court allowed the petition.

5) Sri V.S.R.Anjaneyulu, learned counsel for the petitioner would submit since there is dispute with regard to the ownership of the property, the matter may be remanded back to trial court for disposal after taking into consideration the material showing the dispute over the property. The same is opposed by the learned counsel for the respondent that a new plea is sought to be taken in C.R.P. which is not the case of the petitioner before the trial court at any point of time. According to him, such plea cannot be allowed when the evidence of plaintiff is also closed.

6) From the record, it is clear that the defendant is disputing the ownership of the plaintiffs. The issue as to who is the owner of the property will be decided the O.S.No.153 of 2017 filed for decree of eviction against the defendant and for delivery of vacant possession of the plaint schedule property apart from recovery of the rent; while the plea of the petitioner herein is that it is a wakf property. The reason on which the request of the defendant was rejected being that no scrap of paper has been filed to show that the said property is a wakf property. It was held that mere denial of title over plaint schedule property will not disentitle the defendant not to pay rents of the schedule property. It was also held that until the rights of the parties are decided in the main suit, there is no harm in directing the defendant to deposit the rent of the plaint schedule property.

7) It would be appropriate to extract Order 15-A of the C.P.C.

"Striking off defence in a suit by a Lessor.

1.(1) In any suit by a lessor for eviction of a lessee or for the recovery of rent and future and mensem profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears upto the date of the order (within such time as the Court may fix) and thereunder continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall continue to deposit such amount till the decision of the suit.

In the event of any default in making the deposit, as aforesaid, the Court may subject to the provisions of sub-rule(2) strike off the defence.

2. Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his advocate to show-cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved an order striking off the defence.

3.The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it would not also be treated as a waiver of notice of termination."

8) As seen from the order, the reason for rejection of the request of the petitioner/defendant was that no scrap of paper has been filed in support of the plea i.e., raising a dispute as to the title of the property. However, before this Court the counsel placed on record the lease agreement dated 21.11.2016 and rent receipts showing payment of rent. Insofar as lease agreement dated 21.11.2016 is concerned, it appears that the said document was referred to in the impugned order. But, the relevancy or otherwise

of the receipts issued by the petitioner herein i.e., defendant in the suit, was not referred to in the order. In the absence of any material being placed before the Court evidencing a dispute over the property, more so, in the form of a registered document, it cannot be said that the order of the trial court is at fault. Therefore, the order of the trial court in allowing the request of the petitioners basing on the material available, cannot be found fault with.

9) Accordingly, the C.R.P. is disposed of, giving liberty to the petitioner to make a fresh application enclosing all the necessary documents showing his right or title over the property, in which event the trial court may deal with the same in accordance with law.

10). There shall be no order as to costs. Miscellaneous Petitions pending if any in this C.R.P. shall stand closed.

ACTING CHIEF JUSTICE C. PRAVEEN KUMAR

Dt: 01.05.2019

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