

PETITIONER:
SMT. FATIMA BEE

Vs.

RESPONDENT:
MAHMOOD SIDDIQUI

DATE OF JUDGMENT: 24/07/1996

BENCH:
NANAVATI G.T. (J)
BENCH:
NANAVATI G.T. (J)
AGRAWAL, S.C. (J)

CITATION:
JT 1996 (6) 706 1996 SCALE (5)495

ACT:

HEADNOTE:

JUDGMENT:

WITH

CIVIL APPEAL NOS 9744-45 OF 1996
(Arising out of SLP (C) Nos. 9373-74/95)

Smt. Fatima Bee
V.
Mohd Omer Siddiqui

J U D G M E N T

NANVATI, J.

Leave granted.

These four appeals arise out of a common order passed by the Andhra Pradesh High Court and, therefore, they are heard together and disposed of by this judgment. Civil Appeals arising out of SLP(C) Nos.8946-47 of 1995 are filed against the order passed by the High Court in C.R.P. Nos. 757 and 758 of 1994 and Civil Appeals arising out of SLP(C) Nos.9373-74 of 1995 are filed against the order passed by the High Court in C.R.P. Nos. 759 and 760 of 1994. The High Court reserved the finding recorded by the courts below, set aside the judgment and order passed by the appellate Court and dismissed the eviction petitions filed by the respondent therein.

The appellant is the owner of two non residential buildings bearing Nos. 21-2-372 and 21-2-373 situated in Lad Bazar, Hyderabad. Both the buildings have two floors. Mahamood Siddiqui is the tenant of both the floors of the building bearing No.21-2-373. Omer Siddiqui is the tenant of the ground floor and Ahmad Khan is the tenant of the first floor of the building bearing No.21-2-372. The appellant along with her husband and other family members is engaged in the business of manufacturing and selling bangles. The said family business is carried on in three rented premises. As the landlords of the said premises were pressing them to vacate the same and as it was-inconvenient to carry on their business from those three different places the appellant first requested and then gave a notice to them to vacate the suit premises. As the tenants did not vacate she filed three

separate aviction Petitions being R.C. Nos.136, 142 and 135 of 1980 under Section 10(3) of the Andhra Pradesh Buildings (lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as the Act) in the Court of the Second Additional Rent Controller, Hyderabad stating that she requires the suit premises bona fide for carrying on her business. The Rent Controller after appreciating the evidence on record held that the landlady does not own any other non-residential premises and that she is not carrying on her business in the residential premises occupied by her. The Rent Controller further held that the claim of the landlady that she requires the suit premises for her personal occupation for carrying on her business is bonafide and genuine. He, therefore, allowed the aviction petitions and directed the tenants to vacate the suit premises. These eviction orders were passed by the Rent Controller on 11.4.1989. Against these orders of eviction Mahamood Siddiqui, Omer Siddiqui and Ahmad Khan filed R.A. Nos. 237, 238 and 236 of 1989 respectively.

Meanwhile, the appellants had also filed three other eviction petitions being R.C. Nos. 1776, 1777 and 1785 of 1986 against Mahamood Siddiqui, Omer Siddiqui and Ahmad Khan respectively under Section 10 of the Act as the said tenants had taken up a false plea in their written statements filed in R.C. Nos. 136, 142 and 135 of 1980 that the landlady had entered into an agreement with them for sale of the suit property, and that they have a right of permanent tenancy. Mahamood had further denied that he was a tenant of premises bearing No. 21 2-373 and Omer had denied his tenancy in respect of premises bearing No. 21-2-372. The Rent controller held that the landlady was able to establish the relationship of landlord and tenant between them as claimed, and, thus denial of her title by those two tenants was mala fide. The Rent Controller also held that the tenants have failed to establish their claim that the landlady had agreed to sell the suit premises to them and that she had promised them not to evict. The Rent Controller also held that claim of permanent tenancy was mala fide and not bona fide. Therefore, The Rent Controller allowed the eviction petitions on those grounds and left open the question whether raising the plea of agreement to sell amounted to nuisance or not. The tenants feeling aggrieved by the decision of the Rent Controller appealed to the Court of the Chief Judge, City Small Cause Court, Hyderabad.

All the appeals were heard together. The Appellate Court confirmed the findings regarding tenancy and bona fide requirement of the landlady's title and claim of permanent tenancy were mala fide. All the appeals were, therefore, dismissed.

The tenants then preferred six separate revision applications in the Andhra High Court. They were heard together by the High Court and were disposed of by a common order. In view of the additional finding recorded in the case of Ahmad Khan that he had sub-let the premises of which he was tenants and had also defaulted in payment of rent the High Court dismissed his Revision Application Nos. 791 and 762 of 1994 and upheld the order of eviction passed against him. In the revision applications filed by Mahamood Siddiqui and Mohd. Omer the High Court held that the tenants had not denied that Fatima Bee is the owner of the suit premises and that by raising a plea that they were not the tenants in respect of the premises described by in her applications, it cannot be said that they had denied her title. The High Court also held that raising of the plea that there was an agreement for sale did not amount to denial of landlady's

title. As regards the claim of, permanent tenancy the High Court held that there was some evidence in this case to support it and, therefore, it cannot be regarded as a mala fide claim. On the question of bona fide claim need the High Court held that the finding of the courts below on this point was "not based on relevant evidence relating to the needs of the business, even if it is considered that the business of the husband was that of the wife". The High Court further held that the requirements of Section 10 (3)(a)(iii)(a) have not been made out, inasmuch as the satisfaction of the rent controller relating to the bona fide needs of the landlord was not supported by relevant evidence inasmuch as in the area of the premises required for carrying on the business is not stated in the evidence on record. Since that omission vitiates the findings of the authorities below, these findings cannot be taken as binding in these proceedings". Taking this view the High Court allowed the revision applications filed there.

The learned counsel for the appellant contended that the High Court committed not only an error of law but went beyond its jurisdiction in re-appreciating the evidence and reversing the finding regarding the bona fide requirement of the landlady. The High Court also committed a grave error in doubting correctness of the finding recorded by the courts below that she is engaged in the business of manufacturing and selling bangles along with her family members. In our opinion, this contention raised on behalf of the appellant deserves to be accepted. We are also of the opinion that the High Court committed a grave error in reversing the finding that the claim of permanent tenancy was mala fide. The Rent Controller after appreciating the evidence led on behalf of the landlady and that of the tenants had recorded the finding that the landlady requires the suit premises bona fide for carrying on her business. The Rent Controller had also recorded the finding after appreciating the rival evidence that she was carrying on business as averred by her along with other family members. These were the findings of facts recorded after appreciation of evidence. These findings were confirmed by the appellate court again after appreciating the evidence. No part of the evidence was misread by the courts below. Therefore, there was no justification for the High Court to reverse the said findings of facts. It was stated by the witnesses examined on behalf of the landlady that their bangle business was carried on from three different shops. It was further stated by them that they intend to carry on the said business from the suit premises. It was not even put to these witnesses that a lesser area would be sufficient for the purpose of carrying on that business. It was, therefore, improper for the High Court to interfere with the findings of fact in this behalf on the ground that the landlady has not shown how much area she requires for carrying on her business.

As regards the claim of the tenants that they have a right of permanent tenancy what they have stated in their evidence is that when the landlady purchased the suit premises she and her husband had assured them that they will not evict them. The husband of the landlady who was examined as a witness had clearly denied in his evidence that any such assurance was given to the tenants. The Rent Controller and the appellate court after appreciating the rival evidence thought it fit to believe the evidence led on behalf of the landlady. The finding recorded in this behalf was again a finding of fact. The High Court in re-appreciating the evidence and reversing the finding on this point obviously went beyond its jurisdiction. Even otherwise

also the view by the High Court does not appear to be correct. The landlady had purchased the suit premises at a court auction, There is no evidence to show that the tenants were present at the time of a auction. Even if they were present there was no reason for the purchaser, that is, the landlady or her husband to give such an assurance to the tenants at the time of purchasing the two properties at the court auction. It also appears that the High Court overlooked the correct position that according to Section 10(1) provision and 10(2)(vi) of the Act, mala fide claim of permanent tenancy is also a separate in ground for eviction, apart from denial of title to the landlord.

We, therefore, allow these appeals, set aside the judgment and order passed by the High Court in Civil Revision petition Nos. 757, 758, 759 and 760 of 1994 and restore the judgement and order passed by the Rent Controller in R.C. Nos. 1776, 1777 of 1986 and 136, 142 of 1980 as confirmed by the appellate court in R.A. Nos.237 of 1989, 299 of 1992, 238 of 1989 and 302 of 1992. In view of the facts and circumstances of the case there shall be no order as to costs.