

CASE NO.:
Appeal (civil) 2313 of 1999

PETITIONER:
LINGALA KONDALA RAO

RESPONDENT:
VOOTUKURI NARAYANA RAO

DATE OF JUDGMENT: 21/11/2002

BENCH:
R.C. LAHOTI AND BRIJESH KUMAR

JUDGMENT:
JUDGMENT

2002 Supp(4) SCR 319

The following Order of the Court was delivered by

A suit for eviction of tenant from non-residential premises based on the ground available under sub-clause (iii) of Clause (a) of sub-section (3) of Section 10 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (hereinafter 'the Act', for short), has been decreed by the Controller, which decree has been upheld in appeal, as also in revision by the High Court. The tenant-appellant has filed this appeal by special leave.

The facts relevant and admitted or beyond the pale of controversy at this stage are jejune. The father of the respondent was the owner of the suit property. He had let out the suit accommodation-non-residential in nature, being a shop. The property was self-acquired property of the late father of the respondent. The family consisted of the father of the respondent, the mother of the respondent and three sons including the respondent. On 24.6.1988, the father executed a registered deed of settlement whereby the suit shop was gifted to the respondent. The execution and registration of the deed of settlement is not in dispute. Consequent thereupon exclusive title in the suit shop has come to vest in the respondent. In the year 1991, the father of the respondent died. His other property which also has a few other shops devolved upon the family consisting of three sons and their widow mother. The shops other than the suit premises are in occupation of the joint family and also owned by it. So far as the suit shop is concerned, it is owned exclusively by the respondent and is in occupation of the appellant-tenant.

The bonafide requirement of the respondent for the suit shop for commencing his own business has been found proved by all the three Courts concurrently. The sole question arising for decision in this appeal centres around interpretation of Section 10(3)(a)(iii) as to whether a landlord who is entitled to a share in joint Hindu Family property in the shops which are in occupation of joint Hindu family wherein joint family business is being carried on is denied the right of seeking eviction from an accommodation exclusively owned by him under the said provision.

Section 10, in so far as relevant for the purpose of this appeal, reads as under :-

"10. Eviction of tenants :- (1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this Section or Sections 12 and 13:

xxx
xxx

xxx

(2) xxx

xxx

xxx

(3) (a) A landlord may subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building -

(i) xxx xxx xxx (ii) xxx xxx xxx

(iii) in case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise."

The learned counsel for the appellant has submitted that the shops in the occupation of the joint Hindu family are as much owned by the respondent as any other member of the family. The respondent shall also be deemed to be in occupation of the shops inasmuch as the joint family business which is being carried on in those shops is as much the business of the respondent as of any other member of the family. In any case, submitted the learned counsel, the respondent is entitled to a share in the property and in view of his juridical occupation of other shops he would be disentitled from seeking eviction of the tenant on the said ground. To disentitle the landlord from claiming eviction under Section 10(3)(a)(iii) of the Act it must be shown that the landlord is in occupation of a non-residential building in the city, town or village concerned and that such building is his own or to the possession of which he is entitled under the Act or otherwise. In case of occupation of property by members of joint Hindu family wherein the interest of a member remains fluctuating depending on the increase or decrease in number of members of the family it cannot be said that the landlord is in occupation of a non-residential building which expression, in the setting in which it has been used, would mean his own occupation in his own right. On the same reasoning, the non-residential building owned by joint Hindu family cannot be called a non-residential building "which is his own". The expression 'to the possession of which he is entitled' has to be construed as an immediate entitlement to possession so as to satisfy his requirement as stated in (a) and (b) part of sub-Clause (iii). A landlord cannot be expected to dislodge the members of the joint family from their possession over the joint family premises simply because the landlord requires the premises for his own exclusive use. He is not "entitled" to possession over joint family premises unless he claims partition whereat the suit premises are also allotted to him. In a partition he may or may not be held entitled to possession over the non-residential building pointed out by the tenant as an alternate accommodation and relied on by him for defeating the claim of the landlord. Therefore, a non-residential building owned by joint Hindu family and in its occupation would not be included within the meaning of the expression "which is his own or to the possession of which he is entitled". A non-residential building said to be owned or being under entitlement to possession by the landlord under Section 10(3)(a)(iii) of the Act cannot be just any non-residential building without regard to other relevant factors including the extent of the ownership of the landlord and the remoteness between his entitlement and the occurrence of event when he would actually get possession. In taking this view, we find support from a few decisions of this Court.

In *M. Pamanabha Setty v. K.P. Papiiah Setty*, [1966] 3 SCR 868, the Constitution Bench, interpreting the expression 'entitled to possession' in a pari materia provision contained in a Mysore Act held that the expression would not include another tenanted accommodation wherefrom the landlord could evict the tenant by making out a ground for eviction nor would the expression include a building where the landlord has a right to stay till he is evicted. The Constitution Bench held that the object of the Act is to prevent unreasonable eviction of tenants. It cannot be said that the Legislature considered it unreasonable for a landlord to shift to his own premises while he is in occupation of tenanted premises over which he has

not an absolute right of possession but only a right to remain possession.

In Boorgu Jagadeshwaraiah & Sons v. Pushpa Trading Co., [1988] 5 SCC 572, this Court held that the aspect of quality, size and suitability of the building cannot be totally put out of consideration else the purpose of the Act would be frustrated.

In G. Kaushalya Devi (Smt.) v. Ghanshyamdas, [2000] 2 SCC 1 it was held that the expression "to the possession of which he is entitled" would not mean possession otherwise than as an owner or in that capacity. Tenanted premises in which the landlord was already having his business and hence of which he was in possession and another shop purchased by the mother of the landlord with the amount loaned by him were held not to be buildings which could disentitle the landlord from seeking an order to be put in possession of the tenanted building.

We hold that joint Hindu family premises in which joint family business is being run and wherein the landlord too has a share and interest and juridicial possession on account of being a member of the family would not disentitle the landlord from seeking recovery of possession from tenant of a non-residential building exclusively owned by him subject to his satisfying other requirements of Section 10(3)(a)(iii).

It was submitted by the learned counsel for the appellant that the respondent's requirement cannot be said to be bona fide. It was submitted that a Full Bench of Andhra Pradesh High Court rendered its decisions in Smt. Vidya Bai and Am. v. Shankerlal and Anr, AIR (1988) A.P. 184 on 24.9.1987 wherein the Court took the view that availability of non-residential building belonging to joint family was a relevant factor for denying recovery of possession by landlord under Section 10(3)(a)(iii) of the Act and shortly thereafter on 24.6.1988 the late father of the respondent executed and registered the deed of settlement conferring title on the respondent. In the year 1991, the father of the respondent died and then the present proceedings were initiated by the landlord. This shows that exclusive ownership over the suit premises vesting in the landlord-respondent is a manipulation pointing go out to mala fides. Suffice it to observe that it is too far fetched an inference to draw that the object behind execution of the registered deed of settlement was the eviction of the tenant-appellant, more so, when there is no material available on record to base such an inference. The execution and registration of the deed of settlement is not disputed. In an eviction suit between the landlord and the tenant the motive behind execution of the document conferring title on the landlord cannot be allowed to be gone into so long as the document has been executed and registered in accordance with law and the transaction is otherwise legal. It is pertinent to note that no member of the family adversely affected by the deed of settlement has chosen to lay any challenge to it. Incidentally, it may be noted that the Full Bench decision in Smt. Vidya Bai 's case was cited with approval before a two-Judge Bench of this Court in D. Devaji v. K. Sudarshana Rao, [1994] Supp. 1 SCC 729. However, the correctness of the decision of this Court in D. Devaji's case was doubted by another two-Judge Bench see [1997] 8 SCC 108 whereafter the matter came to be considered by a three-Judge Bench in Boorgu Jagadeshwariaiah & Sons v. Pushpa Trading Co., [1998] 5 SCC 572. In D. Devaji's case the view taken by this Court was that the landlord should not be in possession of another non-residential building or of which he is entitled to be in possession in the city, town or village concerned. The intentment of the Legislature was that the landlord who is in occupation of a non-residential building which is his own or to the possession of which he is entitled to under the Act or any other law should not be permitted to recover a possession of another non-residential building belonging to him by evicting the tenant therefrom. In Boorgu Jagadeshwaraiah' case the three-Judge Bench held that the view so taken in D. Devaji's case was an extremely narrow and literal construction placed on the provision which had the effect of the scuttling the intention of the Legislature. The view of the law taken by High Court of A.P. in Smt. Vidya Bai's case becomes,

therefore, of doubtful authority.

No fault can be found with the view taken by the High Court. The appeal is held devoid of any merit and liable to be dismissed. It is dismissed accordingly. However, the tenant-appellant is allowed three month' time for vacating the suit premises subject to his filing usual undertaking within a period of four weeks from today in the executing court.

JUDIS