

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 5654/2008

AHMAD @ MOHD. AHMAD

APPELLANT(S)

VERSUS

MOHD. OSMAN

RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5655/2008

MEER SATTAR ALI (Dead) by Lrs.

APPELLANT(S)

VERSUS

MOHD. OSMAN

RESPONDENT(S)

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

1. The judgment and order dated 29.11.2006 passed by the High Court of Judicature Andhra Pradesh, whereby the High Court has dismissed the revision petitions, is assailed before this Court in these appeals.
2. The respondent herein filed Eviction Petition R.C. No.33 of

1997 before the Principal Rent Controller, Secunderabad against Ahmad alias Mohd. Ahmad and Eviction Petition R.C. No.125 of 1997 before XVIII Junior Civil Judge-Cum-Additional Rent Controller at Secunderabad against Meer Sattar Ali seeking eviction of the tenants/appellants herein. Both the eviction petitions were dismissed on the ground that the jural relationship between the parties as landlord and tenants is not established. The Trial Court thus, concluded that there is no question of wilful default in payment of rent by the tenants. Incidentally, it also held that the premises in question are not required for *bona fide* purpose of the landlord i.e. for additional accommodation. The orders passed by the Principal Rent Controller, Secunderabad were questioned by the landlord/respondent herein in R.A. No.23 of 2001 and R.A. No.232 of 1999 on the file of Additional Chief Judge, City Small Causes Court, Hyderabad, which came to be allowed. The judgments passed by the Rent Appellate Court were affirmed by the High Court of Judicature Andhra Pradesh in Civil Revision No.2374 of 2004 and Civil Revision No.2375 of 2004. Hence, the aggrieved tenants are before this Court.

3. Learned counsel for the appellants/tenants, taking us through the material on record, submit that the tenants and the landlord

are the encroachers upon the Government property; and thus, the respondent herein is not real landlord and consequently, they are not tenants under him. She further submits that the denial of title by the tenants is *bona fide*; one encroacher cannot evict another encroacher and, therefore, the orders of the Rent Controller need to be restored by setting aside the judgments of the Rent Appellate Tribunal as well as the High Court.

Learned counsel appearing on behalf of the respondent/landlord argued in support of the concurrent judgments of the Courts below.

4. The entire property bearing Cantonment Municipal No.1-19-1 to 13 (Old Nos. 105 and 106) situated at Guntroop Bazar, Rasoolpura, Secunderabad Cantonment measuring about 3000 sq. yards was purchased by the father of the respondent-landlord under two registered sale deeds in the years 1911 and 1912. Respondent-landlord has filed the registered sale deeds Exhibits P41 and P45 which clearly establish that the entire property of which the demised premises is also a part, the father of the respondent-landlord was the absolute owner. As pointed out by the first appellate court and also the High Court, the above sale deeds and other documents were produced and accepted as documents of

title of the landlord in O.S. No. 3292 of 1979 on the file of XI Assistant Judge, City Civil Court, Secunderabad which suit was filed by the landlord and other legal heirs of father of the landlord for evicting one Mumtaz Begum and others who were in illegal occupation of some portions of the said properties. Upon perusal of the title deeds of the property, the said suit, O.S. No.3292 of 1979, came to be decreed in favour of the respondent-landlord. The said judgment was also confirmed in appeal in A.S. No.197 of 1987 by the Additional Chief Judge, City Small Causes Court, Secunderabad.

5. The ownership of the property including demised premises is also established by the assessment records maintained by the Secunderabad Cantonment Board. The Cantonment's Board letter Exhibit P2 dated 21.12.1983, addressed to the mother of the respondent-landlord, mentions that the house Nos.105 and 106 situated in the locality known as Guntroop Bazar till 1956 which is assigned the new house No.1-19-1 to 13, is situated in the same locality now called Rasoolpura, Secunderabad. The premises No.1-19-1 to 13 situated in Secunderabad stands mutated in the name of mother of the landlord as per the records of the Cantonment Board. The mother, brother and sister of the

respondent-landlord executed the release deed as per Exhibit P15 and relinquished their rights, the portion of the house bearing old Nos.105 and 106 (New No.1-19-1 to 13) to an extent of 997 sq. yards, Secunderabad in favour of the landlord.

6. Insofar as the stand taken by the tenant that he is in occupation of 1-19-6, the appellant-tenant has not produced any oral or documentary evidence to prove that the said property bearing No.1-19-6 is in his occupation in his own right. According to respondent-landlord, the portion occupied by the tenant forms part and parcel of house No.1-19-1 to 13. The courts below have referred to the report of the Commissioner that the demised premises which is in occupation of the appellant-tenant is adjoining to the premises in occupation of the landlord and is just separated by a wall.

6A. Insofar as the contention of the appellant that the property is the government property, PW-5 Balaiah, Mandal Revenue Officer, Secunderabad has stated in his evidence that after perusing the title deeds, Exhibit X2 was issued and that the land in question along with building Municipal No.1-19-1 to 13 Secunderabad is a private property. There are about twenty tenants in the premises No.1-19-1 to 13 and that the respondent-landlord had been

directed to pay the arrears of tax by the Municipality is yet another evidence establishing the ownership of the respondent-landlord.

6B. Apart from the documentary evidence, respondent-landlord had also adduced oral evidence by examining his mother (PW-3), who has spoken about the tenancy and quantum of rent and she used to collect rents from the tenants. PW-4 who is in occupation of the other portion of the same building since 1965 till 1995 and who subsequently purchased the same from the legal heirs of M.A. Razack has also spoken about the tenancy of appellant-tenant.

7. We find that the Rent Appellate Court as well as the High Court have rightly and concurrently concluded that the respondent-landlord has established a jural relationship. The landlord's mother, though was not in the habit of issuing rent receipts, had maintained the account book Exhibit P4, which depicts the rent paid by tenants. Based on the number of documents filed by the respondent-landlord and the oral evidence, the High Court as well as the first appellate court have recorded a concurrent finding of the fact that the tenant failed to establish his ownership in the demised premises and that there is no *bona fide* in the denial of ownership of the respondent-landlord and we find no reason to interfere with the same.

8. It is also established by the landlord, as is clear from the definite findings of the Courts below, that he has proved his *bona fide* requirement inasmuch as he needs the premises for his additional accommodation. Even otherwise there is no serious contest on this point.

9. Having regard to the totality of the facts and circumstances, these appeals are liable to be dismissed and are hence dismissed.

10. The appellants/tenants are directed to handover peaceful and vacant possession of the respective properties occupied by them to the landlord/respondent herein on or before 31.12.2017 subject to filing of usual undertaking within four weeks from today before the Registry of this Court.

11. Pending applications, if any, shall stand disposed of.

12. There shall be no orders as to costs.

.....**J.**
[R. BANUMATHI]

.....**J.**
[MOHAN M. SHANTANAGOUDAR]

NEW DELHI;
Dated: MARCH 30, 2017.

REVISIED
ITEM NO.1A(For Judgment) COURT NO.10 SECTION XIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 5654/2008

AHMAD @ MD. AHMAD

Appellant(s)

VERSUS

MD. OSMAN

Respondent(s)

WITH

C.A. No. 5655/2008

Date : 30/03/2017 These appeals were called on for pronouncement of judgment today.

CORAM : HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s) Ms. C. K. Sucharita, AOR

For Respondent(s) Ms. Anitha Shenoy, AOR.

Hon'ble Mr. Justice Mohan M. Shantanagoudar pronounced the judgment of the Bench comprising Her Ladyship R. Banumathi and His Lordship.

For the reasons stated in the signed non-reportable judgment, the appeals are dismissed.

Pending applications, if any, shall stand disposed of.

There shall be no orders as to costs.

(LAYA RAWAT)

SR.P.A.

(Signed non-reportable judgment is placed on the file)

(CHANDER BALA)

COURT MASTER

ITEM NO.1A(For Judgment)

COURT NO.10

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
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For Appellant(s) Ms. C. K. Sucharita, AOR

For Respondent(s) Ms. Anitha Shenoy, AOR.

Hon'ble Mr. Justice Mohan M. Shantanagoudar pronounced the judgment of the Bench comprising Her Ladyship R. Banumathi and His Lordship.

For the reasons stated in the signed non-reportable judgment, the appeals are allowed.

Pending applications, if any, shall stand disposed of.

There shall be no orders as to costs.

(LAYA RAWAT)

SR.P.A.

(Signed non-reportable judgment is placed on the file)

(CHANDER BALA)

COURT MASTER