

(1987) 01 KAR CK 0004
In the Karnataka High Court
Case No : C.R.P. No. 2792 of 1982

Abdul Azeez

APPELLANT

Vs

Sakamma

RESPONDENT

Date of Decision : 09-01-1987

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 21 (1) (f), 30

Citation : (1987) ILR (Kar) 498 : (1987) 1 KarLJ 202

Hon'ble Judges : Doddakale Gowda, J

Bench : Single Bench

Advocate : H.B. Datar, for B.B. Mandappa, for the Appellant; M.S. Subbarayappa and H.L. Krishna Murthy for Respondents R-1(c), 1 and 1(a), for the Respondent

Final Decision : Dismissed

Judgement

Doddakale Gowda, J.—Petitioner faced with eviction order under Clause (f) of proviso to Sub-section (1) of Section 21 of the Karnataka Rent Control Act (hereinafter referred to as the "Act") viz., that he is a sub-lessee, has presented this Revision Petition u/s 115 of the Code of Civil Procedure.

It will be convenient to refer to the parties in their original character of petitioners and respondents, bearing in mind that petitioners 1 and 2 are respondents 1 and 2 and second respondent is the revision petitioner. First respondent arrayed as third respondent has remained ex-prate throughout. L.Rs. of first respondent have been brought on record as she died during the pendency of this revision petition.

2. Fact that second petitioner has become the owner pursuant to a compromise (Ex. P-1) entered into in O. S. No. 28 of 1973 on the file of the Civil Judge, Tumkur, is not controverted. Present proceedings have been initiated by petitioners after withdrawal of H.R.C. No. 2 of 1972. As withdrawal of H.R.C. No. 2 of 1972 has no bearing on decisions of issues involved in the present proceedings, there is no necessity to refer to that proceedings in detail.

3. Petitioners sought for eviction on two counts viz., (i) respondents have committed default in payment of rents; and (ii) sub-lease by first respondent in favour of second respondent without consent or authorisation of owners, being contrary to Clause (f) of proviso to Sub-section (1) of Section 21 of the Act, they are liable to be evicted.

Second respondent resisted the eviction proceedings contending, inter alia, that he has taken the premises on lease in September 1968 from first petitioner and disputed his status as sub-lessee. As petitioners have accepted rents sent by him through Money Orders they have recognised him as their tenant. It is also contended that as he did not accede to demand made for payment of enhanced rents, they have started this proceedings with oblique motive. He contended that as petitioners have declined to accept rents offered, no eviction can be ordered under Clause (a).

4. Trial Court has not recorded finding regarding arrears of rent, so also District Court.

5. The bone of contention before Courts below as well as in this Court is - whether second respondent is a sub-lessee under first respondent or lessee by himself having obtained premises on lease from first petitioner ?

6. Petitioners examined five witnesses and marked eight exhibits. Second respondent has examined himself and marked eighteen exhibits.

7. Specific defence taken by second respondent reads thus :-

"That this respondent took the notice schedule property from the petitioner-1 on a monthly rent of Rs. 30/- and the tenancy is from month to month and commencing from 1st of every month. He has been continuing in possession and enjoyment of the property as a tenant and he is carrying on his trade in the schedule premises."

Learned District Judge after referring to defence taken in earlier eviction proceeding i.e., H.R.C. No. 2 of 1972 and defence in this proceeding has held thus :-

"In other words, the 2nd respondent has admitted in his objection statement that the premises had been originally leased in 1961 to the first respondent. The 2nd respondent both in his objection statement filed in H.R.C. 2/72 and in the objection statement filed in the present case deliberately did not mention in his objection statement the date on which or the month or the year in which he took the premises on lease from the first petitioner. It is only in his evidence as RW.1, that he has stated for the first time that he took the premises on lease from the 1st petitioner in 1968. Even then he does not state in which month he took the premises on lease. Ex. P-3 makes it quite clear that Abdul Basha the first respondent to whom the premises was leased was the owner of Babu Shoe Mart. The petitioners having proved that the premises have been leased in the year 1961 to the 1st respondent for running a Shoe Shop under the name and style of

"Babu Shoe Mart", it is for the 2nd respondent to show as to when the 1st respondent vacated the premises and when he occupied the premises as a tenant of the petitioner and also to prove that he was running the premises in the beginning under the name and style of "Babu Shoe Mart," and had subsequently altered the same to "Fancy Foot Wear". In this context it will also be noticed that even in Ex. P-5 the reply caused to be issued by the 2nd respondent dt. 16-5-1974 to the notice caused to be issued by the petitioners, as per the original of Ex. P8 dt. 5-3-1974, the 2nd respondent has not stated that he had taken the premises in lease in the year 1963 and that he was running his shoe business in the said premises till 1970 under the name and style of "Babu Shoe Mart" and had subsequently altered it to Fancy Foot Wear. Thus while the petitioners have proved that they had leased the premises to the 1st respondent in the year 1961 under Ex. P-3 dated 3-8-1961, no evidence has been let in on the side of the 2nd respondent to show that the first respondent vacated the premises in the year 1968 and subsequently 1st petitioner had leased the premises to the 2nd respondent. I am therefore of the opinion that the evidence on record clearly shows that the premises had been leased by the husband of the 1st petitioner to the 1st respondent in the year 1961 under Ex. P3 and the evidence on record does not show that this first respondent had vacated the Petition schedule premises in the year 1968 or any other date and subsequently the 1st petitioner had leased the premises to 2nd respondent. Admittedly the 2nd respondent is in possession of the schedule premises. The only way in which the 2nd respondent would have come to possession of the petition schedule premises, when it is not shown by him that he had taken the premises on lease from the 1st petitioner is that he came into possession of the petition schedule premises as alleged by the petitioners viz., by illegal and unauthorised sub-lease of the premises by the 1st respondent to the 2nd respondent. I am, therefore, of the opinion that the learned Trial Judge was correct in coming to the conclusion that it, has been proved in this case that the 1st respondent who took the premises on lease from the petitioners had illegally and unauthorisedly leased the premises to the 2nd respondent, and therefore, the petitioners are entitled to an order of eviction to be passed against both the respondents u/s 21(1)(f) of the Karnataka Rent Control Act."

This finding is without reference to inaction of first respondent or his conduct neither admitting nor denying sub-lease in favour of second respondent. It is true, Trial Court in last para of order commented on inaction of first respondent and also tried to draw an adverse inference for his non-examination. As learned District Judge has arrived at an independent conclusion with reference to pleading of rival parties, I find no illegality or irregularity.

8. In Ex P-3, lease deed, dated 3 8-1961 first respondent lessee has been described as owner of "Babu Shoe Mart". In Ex.D-3 to Ex.D-8 (M.O. Coupons) through which rents have been sent for the period from 3-3-1970 to 6-3-1971, sender/remitter is mentioned as "Babu Shoe Mart". Rents sent through M.O. Coupons marked as Ex.D-11 to Ex.D-18 for and on behalf of "Fancy Foot Wear"

have not been accepted by petitioners on the ground that they have nothing to do with the Proprietor of Fancy Foot Wear. Courts below have accepted the version of first petitioner that not knowing sender/s name, she accepted the rent as per Ex.D-1. Courts below have also declined to accept the version that second respondent was the Proprietor of "Babu Shoe Mart" and later on changed its name into "Fancy Foot Wear". Nothing much turns on this aspect as second respondent has failed to establish termination of lease in favour of first respondents its discontinuance and also failed to establish that he has taken schedule premises on lease from first petitioner in September 1968 after first respondent vacated the same. So long as lease in favour of first respondent subsists or he is not duly evicted or vacated the premises by surrender, only way in which second respondent can come into possession of suit schedule premises is by means of sub-lease from first respondent.

9. Sri H.B. Datar, Learned Senior Counsel for petitioner, relying on the decision of this Court in S.D. Patel v. H.R. 1979 (1) KLJ 423 Thippiah contended that in case, conclusion that second respondent is a sub-lessee is upheld, then necessarily it follows that Courts below had no jurisdiction to order eviction. Referring to definition of "tenant" as defined in Section 3(r) and prohibition contained in Clause (f) of proviso to Sub-section (1) of Section 21 of the Act, it is held that sub tenant cannot be relegated to the status of a tenant and object of prohibiting sub-lease itself would be defeated if construed, to mean that a tenant includes a sub-tenant. Having so stated, it has been held thus :

"11. On his own showing the petitioner disclaimed the relationship of landlord and tenant between him and the Respondent for which very reason, the Civil Judge functioning under the 1961 Act could not entertain his petition for eviction, adjudicate the same and grant a decree for eviction against the Respondent."

10. Section 21(1)(f) which reads thus :

"21. Protection of tenants against eviction.-(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or other authority in favour of the landlord against the tenant:

Provided that the Court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only, namely :-

XXX XXX XXX XXX (f) that the tenant has unlawfully sublet the whole or part of the premises or assigned or transferred in any other manner his interest therein and where the subletting, assignment or transfer has been made before the coming into operation of this part (except in respect of sub-letting, assignment or transfer to which the provisions of Section 61 are applicable, such sub-letting assignment or transfer has been made contrary to any provision of law then in force ; or" enables the Court, as defined, to order ejectment of tenant as well as persons claiming through tenant.

Issue of sub lease can only be adjudicated by the Court as defined under the Act and not by a Civil Court of general jurisdiction. Such issue can be adjudicated in the presence of so called sub-tenant so as to bind him providing opportunity to have his say. In fact, Section 30 specifically states that notwithstanding anything contained in any other law where the interest of a tenant is determined, for any reason and an order made by a Court for recovery of possession under this Act shall be binding on all persons who may be in occupation of the premises. The proviso states that nothing in this Section shall apply to any person who has at independent title to such premises. Mere fact of impleading of sub-tenant as a party to the proceeding will not oust the jurisdiction. Sub-tenant in whose favour sub-lease is created after coming into force of this Act, if otherwise lawfully permissible, gets relegated to the status of a tenant - vide Section 22 of the Act. In sum and substance, issue as to whether sub-lease is with the consent or authorisation of owner or in contravention of Clause (f) exclusively lies within the jurisdiction of the Court as defined and by implication general jurisdiction of the Civil Court is deemed to have been ousted. If the decision referred to above is understood to have declared, in all cases of sublease, it is only the competent Civil Court that can deal with the matter and not the Court as defined under the Act, with utmost respect, I am unable to subscribe to that view as it would be in clear contravention of the express provisions of the Act.

11. Hence, I find no merit in this Civil Revision Petition and the same is dismissed. However, petitioner is given nine months time from today to quit and deliver vacant possession of the premises to Respondents subject to payment of rents regularly.