

(2004) 01 KAR CK 0071

In the Karnataka High Court

Case No : Regular First Appeal No. 105 of 2003

Abdul Khader (Deceased) by L.R.

APPELLANT

Vs

Sri Dandu Mariyamman Temple Trust

RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:

Karnataka Rent Act, 1999 — Section 27 (2) (s)

Citation : (2004) ILR (Kar) 1299 : (2004) 2 KarLJ 322 : (2004) 2 KCCR 927

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : G.S. Visweswara, for S.Z.A Khureshi, for the Appellant; M.L. Dayananda Kumar, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—This appeal is by the defendant. Respondent-plaintiff is a trust represented by its trustees. Respondent filed O.S. No. 15348 of 1999 on the file of the Additional City Civil Judge, Mayo Hall, Bangalore requesting the Court to direct the defendant to surrender vacant possession of the suit property and to pay damages of Rs. 100A per day from 1-1-1999 till the date of filing the suit amounting to Rs. 7,200/- and also to hold an enquiry in regard to future mesne profits.

2. According to the plaint averments, defendant is a tenant under the plaintiff in respect of the premises No. 25, Venkataswamy Naidu Road, Shivaji Circle, Shivajinagar, Bangalore-51, on a monthly rent of Rs. 211- and that the defendant is irregular in payment of rent and has failed to pay rent from 1-6-1994 to 31-12-1998 amounting to Rs. 1,487/- and restricting the claim for a period of three years has filed the suit for recovery of Rs. 648/-. It is further averred that plaintiff had filed an eviction case against the defendant in H.R.C. No. 3617 of 1982 on the file of the Small Causes Court, Bangalore and which petition came to be dismissed on 13-8-1997 as not maintainable in view of the amendment to Section 2(7)(bb)(iii) of the Karnataka Rent Control Act, 1961 by

terminating the defendant by issuing a legal notice dated 7-1-1999 calling upon the defendant to pay a sum of Rs. 100/- per day for wrongful use and occupation, has filed this suit.

3. Defendant contested the case. He denied the relationship of landlord and tenant. According to him, premises in question is in his possession and his father since 1928 and has become the absolute owner by way of adverse possession and that he is not liable to pay damages either at the rate of Rs. 100/- per day or at any other rate. Petition filed by the trust is not maintainable. According to him, plaintiff-trust being a public charitable trust, trust has to invoke the provisions of the Karnataka Rent Control Act and requested the Court to dismiss the suit.

4. Based on the above pleadings, following issues were framed by the Trial Court:

1. Whether plaintiffs prove that the defendant was their tenant in respect of the schedule premises on a monthly rental of Rs. 211-and the tenancy was according to English Calendar month?

2. Whether plaintiffs have properly terminated the tenancy of the defendant as required u/s 106 of the Transfer of Property Act?

3. Whether plaintiffs are entitled to recover Rs. 648/- towards arrears of rent from the defendant?

4. Whether plaintiffs are entitled to the damages? If so, at what rate?

5. To what reliefs the plaintiffs are entitled?

6. What decree or order?

Additional issue framed on 10-10-2001:

1. Whether defendant proves that he has perfected his title to the suit schedule property by adverse possession?

Additional issues framed on 8-7-2002:

1. Whether the defendant proves that this Court has not jurisdiction to entertain and try the suit in view of the provisions of the Karnataka Hindu Religious Institution and Charitable Endowments Act, 1997 (Karnataka Act No. 33 of 2001)?

2. Whether the defendant proves that this Court has no jurisdiction to entertain and try the suit in view of the provisions of the Karnataka Rent Act, 1999?

Additional issue framed on 21-8-2002:

1. Whether the plaintiffs prove the correct description of the schedule property?

5. On behalf of the plaintiff-trust, trustee Mohan Rangam was examined as P.W. 1 and 3rd trustee V.R. Srinivasan was examined as P.W. 2 and the plaintiff relied

upon Exs. P. 1 to P. 31. On behalf of the defendant, defendant Ameer Jan was examined as D.W. 1 and relied upon the oral evidence of D.Ws. 2 and 3 and documents Exs. D. 1 to D. 17 were relied upon by the defendant. Trial Court after appreciating the oral and documentary evidence produced by the parties, held issues 1 to 5 as proved, additional issue framed on 10-10-2001 and additional issues framed on 8-7-2002 as not proved and additional issue framed on 21-8-2002 as proved and the suit of the plaintiff was decreed directing the defendant to vacate and handover possession of the property within three months and also to pay Rs. 648/- towards arrears of rent and Rs. 7,200/- towards damages and to hold enquiry in regard to mesne profits. This judgment and decree is called in question before this Court in this appeal.

6. Sri G.S. Visweswara appearing for Sri S.Z.A. Khureshi for the appellant has raised the following grounds in this appeal:

- (i) According to him, Trial Court has committed an error in decreeing the suit without considering the fact that there was no jural relationship of landlord and tenant and that the suit filed by the plaintiff as not maintainable;
- (ii) Defendant and his father are in possession of the property since 1928 and have perfected their title by way of adverse possession;
- (iii) Alternatively, he contends that the suit instituted by the plaintiff as not maintainable in view of Section 27(2)(s) of the Karnataka Rent Act, 1999 and on these grounds he requests this Court to set aside the judgment and decree of the Trial Court.

7. Per contra, learned Counsel for the respondent-trust contends that the appellant cannot contend that there was no relationship of landlord and tenant and that he has perfected his title by way of adverse possession in view of deposition of the defendant in H.R.C. No. 3617 of 1982 on the file of the Small Causes Court, Bangalore, and he further contends that provisions of Section 27(2)(s) of the Karnataka Rent Act of 1999 is also not applicable to the facts and circumstances of this case. Therefore, he requests this Court to dismiss the appeal.

8. Having heard the learned Counsels for the parties, this Court has to consider the following points in this appeal:

- * Whether there exists a relationship of landlord and tenant between the plaintiff and defendant?
- * Whether the defendant has perfected his title by way of adverse possession?
- * Whether the suit filed by the plaintiff was not maintainable in view of Section 27(2)(s) of the Karnataka Rent Act of 1999?
- * Whether the judgment and decree of the Trial Court are required to be set aside or modified?

9. It is the specific case of the plaintiff-trust that father of the defendant was the tenant and after his death, defendant continued to be a tenant on a monthly rent of Rs. 27/- and that the defendant has failed to pay the rent payable to the trust and therefore trust had filed an eviction petition against the father of the defendant in H.R.C. No. 3617 of 1982 and that the said case came to be dismissed in view of the amendment to the Rent Control Act of 1961. Plaintiff has produced several documents before the Court, Through P.W. 2-plaintiff has also produced certain counterfoil receipts said to have been issued by the plaintiff in favour of the defendant's father after collecting rent from his father. But, in the cross-examination defendant has denied the signature of his father on Exs. P. 15 to P. 17. Plaintiff has mainly relied upon Ex. P. 27 to prove its case. Ex. P. 27 is the deposition of the defendant in H.R.C. No. 3617 of 1982. Said case was filed by the plaintiff against the defendant. In the said petition, on behalf of the defendant his son Ameer Jan who is now brought on record as legal representative in this appeal was examined as General Power of Attorney holder of Abdul Khader. Examination-in-chief of him reads as hereunder:

"My father took the vacant land in the petition schedule property on lease 50 years ago from the petitioner temple authorities. Then my father put up a shop in that vacant land at his own cost. Since, then my father has been running a motor repairing shop in the petition schedule property. My father has paid the rent up-to-date to the petitioner".

This piece of evidence was deposed by Ameer Jan on 27-8-1992. Again on 27-2-1993 his examination-in-chief was continued. On that day, he has deposed as hereunder:

"I have been a tenant in respect of the petition schedule property for the last 50 years".

On the same day in para 5 of his examination-in-chief he deposed further as hereunder:

"About two months earlier to filing of this petition, P.W. I asked me to pay a rent of Rs. 800/- per month. I did not agree. Therefore, petitioner has filed this petition against me with an intention of evicting me or with an intention of selling away the property".

10. When the General Power of Attorney holder of the defendant who has now become the legal representative of the defendant has admitted the relationship of landlord and tenant, it is not now open for the defendant to contend that there is no relationship of landlord and tenant and that he has perfected his title by way of adverse possession. In regard to adverse possession, in the examination-in-chief in the present suit defendant deposes that the suit property was a vacant property and during the period of Britishers, Abdul Khader was permitted to put up construction to park his jataka cart. He further deposes that the documents of title which were with him have been destroyed by rats and mice. Defendant has not produced any material to show that he has become the absolute owner

of the property. During the course of the arguments Sri Visweswara contends that plaintiff-trust has no title to the property. Therefore, suit filed by the trust as not maintainable. In view of the admission of Ameer Jaan in H.R.C. No. 3618 of 1982 admitting the relationship of landlord and tenant between the plaintiff and himself, according to me, it is not open for the defendant-appellant to contend at this stage that there is no relationship of landlord and tenant and that plaintiff has no title over the property and that he has become the absolute owner by way of adverse possession. The deposition in H.R.C. No. 3617 of 1982 is of the year 1982. Present suit is filed in the year 1999 after the dismissal of H.R.C. petition due to the amendment. Therefore, the defendant at no point of time has raised the question of adverse possession and for the first time in the present suit in the written statement has raised the question of adverse possession and has failed to prove the same. In the circumstances, it has to be held that there exists a relationship of landlord and tenant between the plaintiff and defendant and defendant having admitted the relationship of landlord and tenant cannot question the title of the plaintiff and cannot also contend adverse possession. Accordingly, said three points are held against the appellant.

11. The last point to be considered by this Court is whether the suit instituted by the plaintiff was maintainable in view of Section 27(2)(s) of the Karnataka Rent Act, 1999. Section 27(2)(s) of the Karnataka Rent Act of 1999 reads as hereunder:

"Section 27. 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 the Court, District Judge or High Court in favour of the landlord against a tenant, save as provided in Sub-section (2).

(2) The Court may, on an application made to it in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely.--

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)

(j)

(k)

(l)

(m)

(n)

(o)

(p)

(q)

(r)

(s) that where the landlord is a trustee of any public charitable Trust, the premises are required for occupation for the purpose of the trust".

Relying upon this provision of law, learned Counsel for the appellant contends that plaintiff being a trust has to file eviction case under the Karnataka Rent Act of 1999. Section 2(3) of the Karnataka Rent Act of 1999 reads as hereunder:

"Nothing contained in this Act shall apply.--(a) to any premises belonging to:

(i) The State Government or the Central Government or a local authority;

(ii) A Muzarai or religious or charitable institution;

(iii) A Wakf".

From the reading of Sub-section (3) of Section 2 and Section 27(2)(s) of the Karnataka Rent Act, 1999, it is clear that in regard to the property of a Muzarai or religious or charitable institution, the Karnataka Rent Act of 1999 is not applicable. Admittedly, plaintiff is a charitable institution. When the plaintiff is a charitable institution, as per Section 2(3) of the Karnataka Rent Act of 1999, i.e., Act is not applicable. However, learned Counsel has made a strong reliance on Section 27(2)(s) of the Act. From the reading of this section, it is clear to me that, if a landlord were to be a trustee of any public charitable (trust and if he is a owner of any particular premises and if the said premises is intending to be used by him for the benefit of the trust, in such an event by invoking Section 27(2)(s) of the Karnataka Rent Act of 1999 can institute an eviction petition to evict his tenant from his personal property. Therefore, it is clear that the contention of the learned Counsel for the appellant that the suit filed by the plaintiff was not maintainable is also required to be rejected.

12. Considering the facts and circumstances of this case and considering the fact that the Trial Court has decreed the suit of the plaintiff, after appreciating the oral and documentary evidence adduced by the parties. I do not see any merit in this appeal. Accordingly, this appeal is dismissed.

13. At this stage, learned Counsel for the appellant requests this Court to grant some reasonable time for the appellant to vacate the premises. Considering the facts and circumstances of (he case and considering the conduct of the appellant, though the appellant is not entitled for any time, this Court is inclined to grant six months time provided the appellant undertakes to vacate the premises within six months without resorting the respondent-plaintiff to file an execution and the appellant shall file an undertaking within 15 days from today. Respondent is permitted to withdraw the amount deposited by the appellant before this Court.