

(2015) 08 KAR CK 0309

In the Karnataka High Court

Case No : Regular Second Appeal No. 5111/2010 (PAR)

Anand Madhukar Pai

APPELLANT

Vs

Shyamsndar Subray Nadkarni and Others

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2015) 08 KAR CK 0309

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : P.G. Mogali, for the Appellant; N.G. Rasalkar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J—This is defendant's second appeal filed against the judgment and decree dated 17.11.2009 made in R.A. No. 46/2007 on the file of the learned Civil Judge (Sr.Dn), Kumta, confirming the judgment and decree dated 28.02.2007 made in O.S. 28/2005 on the file of the Addl. Civil Judge (Sr.Dn), Kumta, by decreeing the suit with a direction to the defendant to hand-over possession of the suit schedule properties within three months from the date of the Judgment.

2. The respondents, who are plaintiffs before the Trial Court had filed O.S. No. 28/2005 for ejectment/recovery of suit schedule property, contending that they are the owners of suit schedule buildings which are more fully described in the Schedule to the plaint and the property originally belonged to their father and after his death, plaintiffs have inherited the same. The father of the defendant was a tenant in respect of the said property and was using the same as a shop and godown on monthly rent basis and father of the defendant died on 06.01.1994 and thereafter, the defendant continued to be as a tenant. The accounts regarding rents were taken between the plaintiffs and defendants and as per the accounts, a sum of Rs. 65,000/- was due towards rent. The defendant

agreed for the accounts and requested the plaintiffs for execution of lease agreement in writing and rent was agreed to be paid at Rs. 400/- per month. The defendant has also paid a sum of Rs. 1,600/- towards rent for the period from 1.4.2004 to 31.7.2004. The draft agreement of lease was sent to the defendant on 09.8.2004 under registered post, but the defendant has given a false and vexatious reply. As the said buildings are more than 100 years old and are in dilapidated condition and the same requires urgent repairs. Therefore, the plaintiffs terminated the tenancy of defendant by issuing notice dated 2.12.2004 and the same was served on the defendant on 7.12.2004. The defendant has not replied nor complied the demand made by the plaintiffs. Therefore, the suit was filed.

3. The appellant/defendant filed written statement and denied the entire plaint allegations and contended that the suit building belongs to one Anandu Sheshagin Pai even prior to 1941-42 and the said Anandu Sheshagin Pai was using the same as godown and after him, one Tammanna Sheshagin Pai came into possession of the said buildings and he was independently enjoying the same. The said buildings were used for the purpose of business by the Partnership Firm viz. "Anandu Sheshagiri Pai and Brother" consisting of Tammanna Pai, Vittal Pai and Madhukar Pai as partners. They were paying the ground rent of Rs. 41/- per year in respect of the land. Therefore, the defendant has prayed for dismissal of the suit.

4. Based on the pleadings, the trial court framed the following issues:

"(i) Whether the plaintiffs prove that they are owners of the suit schedule buildings?

(ii) Whether the plaintiffs further prove that the suit schedule buildings were given on rent to the defendant's father orally?

(iii) Whether the plaintiffs further prove that after the death of defendant's father, defendant is continued as a tenant by paying the monthly rents to the plaintiffs?

(iv) Whether the plaintiffs prove that the suit buildings are required for their bona fide use?

(v) Whether the plaintiffs prove that they have terminated monthly tenancy of the defendant by complying under Section 106 of the T.P. Act?

(vi) Whether the plaintiffs are entitled for vacant possession of the suit schedule buildings as prayed?

(vii) Whether the defendant proves that one Tammanna Sheshagin Pai is the owner of the suit schedule buildings?

(viii) What order or decree?"

5. In order to establish the plaintiffs case, plaintiff No. 1 examined himself as

PW-1 and got marked documents Exs. P-1 to 31. On the other hand, the defendant himself examined as DW-1 and got marked documents Exs. D-1 to 17.

6. Considering the entire material on record, the trial court recorded a finding that the plaintiffs proved that they are the owners of the suit schedule buildings and also proved that the suit schedule buildings were given on rent to the defendant's father orally and further held that the plaintiffs proved that after the death of defendant's father, defendant has continued as a tenant by paying the monthly rents to the plaintiffs and the trial court also recorded a finding that the plaintiffs proved that the suit buildings are required for their bona fide use and further, proved that the plaintiffs have terminated monthly tenancy of the defendant by complying under Section 106 of the T.P. Act and therefore, the plaintiffs are entitled for vacant possession of the suit schedule buildings. Accordingly, the suit came to be decreed.

7. Aggrieved by the said judgment and decree, the defendant filed an appeal in R.A. No. 46/2007 before the Civil Judge (Sr.Dn.), Kumta, who after hearing both parties by the impugned judgment and decree dated 17.11.2009 has dismissed the appeal and confirmed the judgment and decree of the trial court. Against the said concurrent finding of fact, the present second appeal is filed by the tenant.

8. I have heard the learned counsel for the parties to the lis.

9. Sri. P.G. Mugali, learned counsel for the appellant, has contended that the impugned judgment and decree passed by the courts below are erroneous, since there exists no relationship of landlords and tenant between the plaintiffs and defendant. Therefore, the judgment and decree passed by the courts below are erroneous and contrary to law. He also contended that there is no proper termination of tenancy and the material documents produced by the defendant have not been considered by the trial court. Therefore, he sought to set aside the impugned judgment and decree of the trial court on the ground of non-consideration of the material documents.

10. Per contra, Sri. N.G. Rasalkar, learned counsel for respondents 1 to 3, sought to justify the impugned judgment and decree of the courts below.

11. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the parties and perused the material on record.

12. The plaintiffs filed the suit for recovery/ejectment of suit schedule property for their bona fide use and occupation and produced documents to prove their case Exs. P-1 to 31 and examined plaintiff No. 1 as PW-1. The defendant got examined himself as DW-1 and produced documents Exs. D-1 to 17 to disprove the case of the plaintiffs contending that plaintiffs are not the owners of the property in question.

13. The trial court considering the oral and documentary evidence on record has categorically held that the plaintiffs are the owners of the suit schedule buildings and that the suit schedule buildings were given on rent to the defendant's father

orally and after the death of defendant's father, defendant has continued as a tenant. Exs. P-1 to 3 are the RTC extracts in respect of the suit buildings, which stand in the name of plaintiffs. Exs. P-4 and 5 are the House Tax Assessment Register Extracts issued by Gokarna Gram Panchayat. Ex. P-4 pertains to the years from 1968-69 to 1979-80 standing in the name of the plaintiff No. 1 as the owner and the father of the defendant as occupier of the building Ex. P-5 is for the period from 1999-2000, in which the owner is shown as plaintiff No. 1 and defendant is shown as the occupier. The defendant has contended that the said building belongs to Tammanna Sheshagin Pai, but no document is produced before the court below to prove the ownership of Tammanna Sheshagin Pai over the suit buildings. The defendant has admitted that from the year 1994, he has been giving the ground rent at the rate of Rs. 41/- per year to the 1st plaintiff. He has stated that he cannot say as to, who has constructed the said buildings. He has stated that they are not paying the building tax in respect of the suit buildings. He has admitted that, Ex. P-4 and 5 are the Building Tax Assessment Register Extracts, pertaining to the suit buildings. The documents produced, show that the plaintiffs are the owners of the suit buildings. The defendant has admitted that the plaintiffs are the owners of the land where the buildings are situated. In the absence of any material produced by the defendant to show that Tammanna Sheshagin Pai was the owner of the building, the trial court, based on the material evidence and admission made by the defendant, has come to the conclusion that the plaintiffs are the owners of the buildings and they are entitled for possession and also held that before filing the suit, the provisions of Section 106 of the Transfer of Property Act has been followed by the plaintiffs and the buildings are for the bona fide use and occupation of the plaintiffs. Therefore, the trial court decreed the suit.

14. On reconsideration, the lower appellate court confirmed the finding of fact and recorded by the court below and held that the defendant has utterly failed to prove that the plaintiffs are not the owners of the suit property. Both the courts below on the cogent and legal evidence on record, concurrently held that the plaintiffs are the owners in possession of the suit schedule buildings and the defendant is the tenant and the buildings are required for their bona fide use and occupation.

15. The said finding is based on the legal evidence on record and the defendant has not made out any ground to interfere with the impugned judgment and decree of the courts below, and no substantial question of law is involved. Accordingly, this regular second appeal is dismissed.