

(1985) 07 KAR CK 0012
In the Karnataka High Court
Case No : C.R.P. No. 871 of 1982

Annappa Manjappa Gudigar

APPELLANT

Vs

Amarnath Vishwanath Dhakappa

RESPONDENT

Date of Decision : 10-07-1985

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 50

Citation : (1985) ILR (Kar) 2900

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : V.G. Sabhahit, for the Appellant; K.I. Bhatta, for the Respondent

Final Decision : Allowed

Judgement

Chandrakantaraj Urs, J.—This Revision raises a very interesting question of law though it is a short one. The facts leading to the Revision Petition u/s 115 C.P.C., may be briefly stated and they are as follows :

2. The petitioner in this Court is the landlord. He filed an eviction Petition in H.R.C. 4/77 in the Court of Additional Munsiff, Sirsi, seeking eviction of the Respondent-tenant from the residential premises occupied by him which the landlord owned. The landlord was a Bank employee who was due to retire in 1980. In order to settle down at Sirsi, his native place, he initiated eviction proceedings in 1977 itself stating the fact that he required the premises bona fide for his use and occupation soon after his retirement. The other ground urged by the landlord was that the tenant had sublet the premises. The tenant resisted the eviction Petition on the ground that the requirement of the landlord was not genuine and that he had not sublet the premises. On such pleas the Munsiff formulated the questions :

(1) Whether the tenant had sublet the premises affording a ground to the landlord under clause (f) of sub-section (I) of Section 21 of the Act?

(2) Whether the landlord had proved his genuine requirement for his bona fide

use and occupation ?

(3) Whether greater hardship would be caused to the tenant if a decree for eviction is passed on considering comparative hardship of the landlord and tenant ?

3. On the first question formulated, he found, there was no case made out by the landlord in regard to sub-letting. On the question of bona fide requirement, the Munsiff found on the evidence adduced before him that he required the premises bona fide. On the third question of comparative hardship, he found in favour of the tenant and therefore, he refused to order eviction under sub-section (4) of Section 21 of the Act.

4. The landlord preferred a revision against the refusal of the Munsiff to pass an order of eviction despite finding that his bona fide requirement was established. In opposing that Revision Petition the tenant preferred cross-objection in regard to the finding recorded by the Munsiff about the bona fide requirement established by the landlord. Learned District Judge has upheld that cross-objection and come to the conclusion, among other things, that the petitioner-land lord had not made out a case for bona fide requirement for his own use and occupation.

5. Before me, this single question of law has been raised by the Learned Counsel Sri Sabhahit for the landlord. It is his contention that the question of filing cross-objections does not arise in Revisional Proceedings on the simple proposition of law that revision is not an appeal. This has been a vexed question of law in the case of Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar, . In that case, the Supreme Court had occasion to consider the provisions relating to revision by the High Court of Madras in the Tamilnadu Building (Lease and Rent Control) Act, 1960 which is in pari materia with sub-section (2) of Section 50 of the Karnataka Act. In the said decision, the Supreme Court has clearly brought about the distinction between an Appeal and Revision and how an Appellate Jurisdiction includes the revisional jurisdiction but not vice-versa (See para-2 of the decision, Supra). In other words, while appellate power exercised would include corrective jurisdiction of the provisional power also, the revisional power when so exercised does not and cannot include the appellate powers. Undoubtedly under the CPC in India, when Court exercises appellate powers, it can entertain cross-objections or cross-appeal as provided under Order 41 C.P.C. In other words, the right to file a cross-objection is right conferred upon the Respondent in an appeal specifically by the CPC which could be exercised by such Respondent or Respondents in exercise of the right so conferred. In other words, right of cross-objection is a statutory right. It is not a right which could be inferred from the language of a statute as contended by Sri K.I. Bhatta. In fact, Sri Bhatta's argument was in support of the order of the District Judge, that the District Judge who has the suo moto power to call for the order of the Munsiff in eviction proceedings under the Act has not only the power to test its legality and the question of jurisdiction but also the correctness of the order in order to

render justice. Therefore, having regard to the wide powers conferred on the Revisional Court he contends, that the Revisional Court has the power to entertain cross-objections. I do not think that that could be the correct view because the Courts must necessarily maintain a distinction between an appellate and revisional jurisdiction at all times. It cannot use one for the other as if they are synonymous.

6. In the aforementioned case of Rajalakshmi Dyeing Works, the Supreme Court made this observation :

"The power conferred on the High Court u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act may not be as narrow as the revisional power of the High Court u/s 115 of the Code of Civil Procedure. But in the words of Untwalia, J. in Dattopant Gopalvarao Devakate Vs. Vithalrao Maruthirao Janagaval, it is not wide enough to make the High Court a second Court of first appeal."

From that, what according to me, clearly emerges is, however wide the jurisdiction of the revisional power conferred may be, such Court which exercises revisional power cannot equate that power to the appellate power. The question of filing cross objections in a Revision Petition does not, there-fore, arise. In that way, entertaining the cross-objections and totally rejecting the Revision filed by the landlord is clearly an error of jurisdiction committed by the District Judge.

7. Therefore, the order under revision is set aside. The matter is remitted back to the District Judge to consider the case of the Revision Petitioner without reference to any cross-objection filed by the tenant-respondent before him and confine himself to decide the case on the facts and circumstances of comparative hardship, whether the land-lord suffers greater hardship and tenant suffers greater hardship should guide the District Judge to make a proper order according to his discretion.

8. This Revision Petition is allowed as indicated above. No costs.