

(1990) 09 KAR CK 0044

In the Karnataka High Court

Case No : Regular First Appeal No. 322 of 1990

Bharathi Family Trust

APPELLANT

Vs

Dr. B. Doraiswamy Naidu

RESPONDENT

Date of Decision : 21-09-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 47, 66

Citation : (1991) ILR (Kar) 1608 : (1991) 1 KarLJ 86

Hon'ble Judges : N.D.V. Bhat, J;K.A. Swami, J

Bench : Division Bench

Advocate : V.P. Kulkarni, for the Appellant; H. Munivenkatappa, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—At the stage of admission, the respondents have entered caveat. As the appeal can be disposed of on the findings recorded by the Court below and as there is no dispute with regard to the evidence referred to by the Court below the appeal is admitted. Production of paper books is dispensed with. By consent of both the sides the appeal is heard for final disposal as it lies in a narrow compass.

2. The Civil Revision Petition 725/1988 is filed by the defendants in O.S.No.8180/1986 who are the plaintiffs in O.S.No.7273/1980. The Civil Revision Petition 725 of 1988 is connected with the subject matter of the suit O.S.No.8180/1980 out of which the present appeal arises. The Civil Revision Petition 725/1988 on a direction by us has also been posted along with this Regular First Appeal and it is also heard along with this appeal. However, the C.R.P. 725 of 1988 will be disposed of by a separate order.

3. The appeal is preferred against the Judgment and decree dated 10-4-1990 passed in O.S.No.8180/1980 by the III Additional City Civil Judge, Bangalore City. The appellants are the defendants in the suit and the respondents are the

plaintiffs.

4. The respondents/plaintiffs filed the aforesaid suit for recovery of a sum of Rs. 36,150/-- along with interest from the defendants -appellants on the ground that the defendants- appellants were the tenants of the suit premises bearing No. 15, situated at Kalasipalyam New Extension, Bangalore, on a monthly rent of Rs. 6,025/- under a registered lease deed dated 3-2-1978 executed in favour of the previous owner Sri Gopalam from whom the plaintiffs have purchased the suit premises; that after the purchase the defendants have attorned to the plaintiffs by paying the rent under a Cheque marked as Ex.P-10 on 12-5-1980. The amount of Rs. 36,150/- was claimed as damages for the period from 3-4-1980 to 3-10-1980. It may also be noticed at this stage itself that the amount of Rs. 36,150/- claimed as mesne profits, in the plaint was at the rate of Rs. 6,025/- p.m. That was also the rent agreed under the lease deed dated 3-2-1978.

5. The defendants resisted the suit and contended that the 5th plaintiff was not entitled to maintain the suit on behalf of plaintiffs 1 to 4; that the plaintiffs were not the owners of the suit premises, therefore, the defendants were not the tenants. However, they admitted that they were the tenants under Gopai. They also further contended that as the plaintiff had filed Original Suit Number 7273 of 1980 in the City Civil Court for possession and also for mesne profits for the period from 3-4-1980 to 3-10-1980 at the rate of Rs. 6,025/-p.m. and that suit had been dismissed, therefore, the plaintiffs were not entitled to the reliefs prayed for in the present suit.

6. On the basis of the pleadings of the parties, the trial Court framed the following issues:-

"1. Whether the plaintiffs No.1 to 4 have executed the power of attorney in favour of 5th plaintiff?

2. Whether the plaintiffs are entitled to recover damages for the use and occupation as claimed in the plaint?

3. Whether this suit is barred under Order 2 Rule 2 and Sections 47 and 66 of Code of Civil Procedure?

4. To what reliefs are the parties entitled?

7. Issues 1 and 2 have been answered in the affirmative and Issue No.3 has been answered in the negative. Consequently a decree for a sum of Rs. 36,150/- with costs and future interest at 6% per annum from the date of suit till the date of realisation has been passed.

8. Sri Kulkarni, learned Counsel for the appellants/defendants has advanced the following contentions:

That the plaintiffs are not the owners of the suit premises; that plaintiffs 1 to 4 have neither given power of attorney to plaintiff No.5 to file the suit on their behalf nor they have verified the plaint; that the power of attorney produced in

the suit pertains to filing of O.S.No.421/1980 which was numbered as O.S.No.7273 of 1980. Therefore, the present suit could not have been filed and prosecuted by 5th plaintiff on behalf of plaintiffs 1 to 4; that the claim for mesne profits made in O.S.No.421/1980 numbered as O.S.No.7273/1980 for the very same period having been refused, the decree passed by the trial Court is bad in law. These contentions are refuted by Sri Munivenkatappa, learned Counsel for the plaintiffs.

9. In the light of the aforesaid contentions, the following points arise for consideration:

1. Whether the finding of the trial Court that the plaintiffs are the owners of the suit premises and the defendants are the tenants suffers from any infirmity?

2. Whether in the absence of the power of attorney in favour of plaintiff No.5, the suit could have been maintained?

3. Whether the decree for mesne profits passed by the trial Court is in accordance with law?

10. Point No.1: During the pendency of the suit, the fifth plaintiff died and plaintiffs 1 to 4 were brought on record as the legal representatives of deceased fifth plaintiff.

11. The plaintiffs in support of their case have produced 16 documents and have, also examined the fourth plaintiff as P.W.1. In support of the plea of the defendants one Sri B.S. Raghavendra Bhatt is examined as D.W.1. No documents are produced.

12. The documentary evidence produced by the plaintiffs consists of the Sale Deed executed by Gopalan, Registered Lease Deed executed by the defendants in favour of Gopalan and the notice exchanged between the parties and also a cheque Ex.P-10 for Rs. 6,025/- dated 12-5-1980 issued in favour of first plaintiff, towards the rent of the premises. These documents are also not disputed before us. From the registered lease deed marked as Exs.P-7 it is clear that the defendants were the tenants under Gopalan who was the owner of the premises. Ex.P-8 is a Registered Sale Deed executed by Gopalan. It goes to prove that the suit premises was sold by Gopalan in favour of the plaintiffs. Subsequent to sale, the defendants have attorned the tenancy to the plaintiffs purchasers by payment of rent through a cheque Ex.P-10 issued in favour of first plaintiff. The trial Court on taking into consideration the documentary evidence and also the oral evidence adduced by the parties has held that the sale deed has been proved and the tenancy has been attorned in favour of the plaintiffs.

13. In the light of the evidence on record, which is referred to above, we are of the view that the finding recorded by the trial Court that the plaintiffs are the owners and the defendants have attorned their tenancy to them is well founded. Hence, point No.1 is answered in the negative.

14. Point No.2:- This point need not detain us any longer because as long as the plaintiffs 1 to 5 are the owners of the suit premises even one of them can maintain a suit for possession against the defendants. The fact that plaintiffs 1 to 4 have neither executed the power of attorney in favour of fifth plaintiff nor verified the plaint will not in any way help the defendants because the fifth plaintiff alone could have maintained a suit for recovery of arrears of rent on behalf of other owners as they are joint owners of the suit property. Hence, in the facts and circumstances, it is held on Point No.2 that maintainability of the suit is not affected by non-execution of power of attorney by plaintiffs 1 to 4 in favour of the fifth plaintiff and non-verification of the plaint by plaintiffs 1 to 4.

15. Point No.3:- There is no doubt that the trial Court is not correct in holding that what the plaintiffs are entitled to is the mesne profits. Plaintiffs have also prayed in the plaint for a sum of Rs. 36,150/- by way of mesne profits. This is a case in which the premises in question is situated in the area to which the Karnataka Rent Control Act, 1961, (hereinafter referred to as the "Act") applies. After the provisions contained in Section 31 of the Act came to be struck down by this Court on 1-7-1986 in W.P.18632/1985 etc., in H. PADMANABHA RAO v. STATE OF KARNATAKA the premises is governed by Chapter V of the Act. Therefore, the tenant in occupation of the premises cannot be evicted except in accordance with the provisions contained in Chapter V of the Act. That being so, all that the plaintiffs would be entitled to is the arrears of rent and not the mesne profits.

However, this conclusion of ours does not make any difference as far as the amount decreed by the trial Court because mesne profits are decreed at the rate of Rs. 6,025/- p.m. for the period 3-4-1980 to 3-10-1980. The rent agreed under the registered lease deed Ex.P-7 is also a sum of Rs. 6,025/- p.m. The plaintiffs also have claimed mesne profits at the rate of Rs. 6,025/- p.m. equivalent to the rent agreed under the lease deed. In such a situation it could not be construed as anything but a claim for arrears of rent. In SMT. ANAND KAUR v. PRITAM LAL a question arose as to whether the notice issued demanding damages for use and occupation of the premises equivalent to the rent was valid? Both the Controller and the Tribunal in the appeal held that "the notice was a valid one and that the expression "damages for use and occupation" contained therein meant nothing more or less than rent". However the High Court reversed it. In the appeal the Supreme Court held as follows:

"No attempt to pay the rent was made in spite of the notice till the end of February 1974. Although thereafter rent was remitted to the landlady through money orders out she refused to accept the same and made an application to the Controller for eviction of the tenant on the sole ground of a second default in the payment of rent. Both the Controller and the Tribunal in the appeal held that the notice was a valid one and that the expression "damages for use and occupation" contained therein meant nothing more or less than rent. In a second appeal, a learned single Judge differed from the Courts below and was of the opinion that

the word "rent" and the said expression could not be taken to the synonymous and that there was no demand of rent in the notice in question which did not, therefore, satisfy the requirements of the provisions contained in Clause (a) above extracted. It is the Judgment of the learned single Judge which is assailed in the present appeal.

After hearing Mr. Vinoo Bhagat, learned Counsel for the appellant, we are of the opinion that the learned single Judge has taken an unnecessarily hypertechnical view of the contents of the notice. It is significant that the notice specifically stated that on account of the termination of the tenancy by an earlier notice the tenant had become what is popularly known as a statutory tenant and it was in this context that a claim was made for damages for use and occupation at a rate equivalent to the agreed rent. We are of the opinion that in the circumstances of the case the demand so made could not be construed as anything but a demand for rent. Consequently the notice must be held to satisfy the requirements of Clause (a) of Sub-section (1) of Section 14 of the Act."

Hence, on Point No. 3 we hold that describing the amount in the decree as mesne profits is not correct and the same should be described as arrears of rent. As the suit for arrears of rent is in time, we hold that the decree has to be only modified by describing the amount decrees as arrears of rent. Hence, Point No.3 is answered accordingly.

For the reasons stated above, we dismiss the appeal with a modification that the amount decreed shall be described as arrears of rent and not mesne profits for the period 3-4-1980 to 3-10-1980.

In the facts and circumstances of the case, we are of the view that each party is ordered to bear the costs in this appeal.