

(1954) 11 KAR CK 0002
In the Karnataka High Court
Case No : Civil Petition No. 66 of 1954

C.G. Sastry

APPELLANT

Vs

B.V. Patankar and Others

RESPONDENT

Date of Decision : 18-11-1954

Acts Referred:

Constitution of India, 1950 — Article 132, 133
Transfer of Property Act, 1882 — Section 1

Citation : AIR 1955 Kar 35

Hon'ble Judges : Medapa, C.J.;Balakrishnaiya, J

Bench : Division Bench

Advocate : S.N. Gopala Rao, for the Appellant; Mirle N. Lakshminaranappa, for the Respondent

Judgement

1. This petition is filed under Articles 132 and 133 of the Constitution of India by the petitioners for issuing a certificate to prefer an appeal to the Supreme Court against, the order of this Court in R. A. 195/51-52, relating to execution proceedings.

2. Briefly stated, the relevant facts necessary for appreciation of the points raised in this petition are these ; Late M.P. Viswanatha Rao, the manager of a Joint Hindu family pf himself and has sons (the petitioners) leased out a family property in Bangalore, to the respondent under, a registered deed of lease dated 3-2-1941, for a period of ten years certain and the lease to commence from 1-5-1941 coupled with an agreement reserving an option to the respondent to renew the lease after the expiry of the original period. The lessor died on 25-1-1945. Soon after this, the petitioners filed a suit in O. S. 66/45-46 on the file of the Court of the District Judge, Bangalore, for the relief that the lease effected by their father was not for legal necessity binding on them and that as a consequential relief they claimed immediate possession of the property, when nearly six years of the initial period of lease had to run. Amongst other contentions, the respondent raised a preliminary objection regarding the

maintainability of the suit on the ground that such a suit was barred under the provisions of the House Rent Control Order, then in force. The trial Court upheld the objection of the respondent and dismissed the suit.

On appeal, the High Court in R.A. 41/47-48 set aside that judgment and remanded the suit for disposal on merits, for the reason that the suit, as framed, was not by a landlord against a tenant but by the junior surviving coparceners to set aside an alienation by their father who was managing the family estate. Ultimately, the trial Court held, on merits, that the lease by the then managing member of the family was prudent act binding on the petitioners in all respects, excepting the agreement to renew the lease after the expiry of the initial period of ten years. Being aggrieved against that decision both the parties preferred appeals. The petitioners filed R. A, 128/48-49 and the respondents filed cross-objections in the High Court. Both the appeal and the cross-objections were dismissed.

3. While deciding the suit, the trial Court declared, under the general issue framed in the suit, that the option of renewal of lease after the expiry of the initial period, was void and unenforceable on account of uncertainty and directed the respondent to hand over possession of the property after the termination of the original period of lease which had to expire on 1-5-1951. This conclusion was also confirmed by the High Court in the appeal referred to above. In Ex. 74/51-52, the petitioners applied to the trial Court for delivery of possession of the property after the expiry of the period fixed in the-decree. The executing Court, without notice to the respondent, ordered delivery and this was duly effected on 22-7-1951. The respondent thereupon filed a petition for setting aside the ex parte order and, as a consequence, to restore possession of the property along with some movables which were represented to have been fixed by him for better enjoyment of the leased premises.

He also contended in that petition that the executing Court had no jurisdiction to order delivery of possession of the property without the permission of the Rent Controller, under the then House Rent Control Order, for the reason that the decree actually passed in the original suit partook of the nature of eviction of a tenant by the landlords. That petition was dismissed by the trial Court, and on appeal by the respondent this Court upheld the contention of the judgment-debtor in R. A. No. 195/51-52. It is against that order that the petitioners seek a certificate to appeal to the Supreme Court.

4. The learned counsel for the petitioners argued that his clients were entitled to the certificate prayed for, under all the three clauses set forth in Article 133 of the Constitution. The arguments addressed in that behalf will be dealt with seriatim.

5. It is contended that Clause 1(a) of Article 133 is satisfied as the subject-matter of the dispute both in the Court of the original instance and on appeal is over Rs. 20,000/- as the moveable items of property said to have been left by

the Judgment-debtor in the premises, and the restoration of which he claimed, are admittedly valued by him at Rs. 26,000/-. The question therefore arises whether the alleged movables were the subject-matter of the original suit and in the appeal. It may" be noticed in this connection that the movables claimed were admittedly fixed by agreement into the structure of the building, such as water-pipes and electric appliances, which the lessee was entitled to take away at the termination of the lease. It is not denied that the question about movables was riot agitated in the original suit and that only after delivery of the leased property in the execution proceedings they were referred to by the judgment-debtor in I. A, No. I of Ex. 74/51-52.

The petitioners are alleged to have agreed to the right of the Judgment-debtor to take away some of the movables claimed by them as could be seen by the observation of the learned District Judge in para 10 of his order which runs thus:

"As regards the "B" schedule movables, the decree-holders also claim a portion of them. The learned counsel for the decree-holders represented that he has absolutely no objection to the judgment-debtor removing the other movables. If there is any dispute between the parties with respect to any of the movables mentioned in the B schedule, that is a matter to be decided by separate proceedings."

Though the petitioners stated that some of the movables claimed belonged to them and that they had otherwise no objection to the judgment-debtor removing the other movables, they have at no time specified the movables belonging either to them or conceded to the judgment-debtor. In fact, at an earlier stage of arguments in the appeal the petitioners took time to specify the movables belonging to the judgment-debtor, so as to enable the Court to permit the judgment-debtor to remove them but they failed to do so. No further arguments were addressed at the time the appeal was heard before this Court about the contentions of either party regarding the movables. All that was decided by us in the appeal was "that the movables then in existence should be restored to the judgment-debtor which obviously referred to the moveable expressly admitted by the petitioners to belong to the judgment-debtor". It is now represented before us by the Judgment-debtor and conceded by the petitioners that a separate suit for the recovery of the said movables has since been filed and is pending decision. It is thus clear that the movables referred to were not the subject-matter of dispute in either Court and are since admittedly covered by pending suit yet to be decided.

6. It was next contended with some seriousness that the order in question attracts Clause (b) of Article 133 as the decision involves indirectly a claim respecting the leased property whose undoubted value is far beyond Rs. 20,000/-. It will be seen from the earlier portion of this order, that the controversy about the lease of the Immovable property was finally set at rest by an affirming judgment of this Court in R. A. 128/48-49, holding that the judgment-debtor should deliver the property after 1-5-1951. As against that

decretal direction to evict, after 1-5-1951, the judgment-debtor could have had no defence at all, except the bar of the provisions of the House Rent Control Order. All that the judgment-debtor claimed was that the decree for eviction could not be enforced by a civil Court without the express permission of the House Rent Controller. The question therefore is whether the final order sought to be appealed from, involves a dispute relating to the property of the value of Rs. 20,000/- or more. "It is the "rights and claims" which should be worth Rs. 20,000/- and not merely the property to which the rights and claims relate" (vide Commentary on the Constitution of India, by Chitaley, Vol. II, page 1118-19. Note 14). We are therefore unable to appreciate the arguments of the learned counsel that the case falls under Clause (b) of Article 133, since" the claim or question involved is not shown to be worth more than Rs. 20.000/-.

7. The last and the most important point pressed before us in this case is that in any event, it must be deemed to be a case at for appeal under Clause (c) of Article 133 on the ground that the decision involves a substantial point of law touching the interpretation of the Constitution itself. It was argued that the bar in execution of a civil court decree is contained in the House Rent Control Order, a local Act, which cannot override the Central Acts such as CPC and the T. P. Act, and when there is a conflict between them the former should give way and the latter should prevail over the local law, by reason of its being repugnant and thus void under Article 354 of the Constitution. This argument, though plausible, is not sound. We have discussed these aspects at some length in our order in appeal R. A. 195/51-52, and it is unnecessary to elaborate them over again. Suffice it to say that Section 4, Civil P.C., gives a local Act local validity and the special procedure therein prescribed validity within its own sphere", the result being that the special procedure prescribed in the House Rent Control Order should be followed in preference to the Provision in the Civil Procedure Code. The other Act, viz., the Central T. P. Act cannot be deemed to have been in force in the State in or about July 1951 when the execution proceedings involved In the dispute took place.

Indeed, the Part B States (Laws) Act, 1951, which was enacted on 22-2-1951 came into effect from 1-4-1951 introducing the Central Acts including the T. P. Act into the States from the appointed date; the point of time when the provisions of the T. P. Act were extended to the State of Mysore was the first day of October 1951, under the following notification:

"No. 2676-Cts. 46-51-5, dated Bangalore 12th September 1951. In exercise of the powers conferred by paragraph 4 of Section 1, Transfer of Property Act, 1882 (Central Act 4 of 1832) His Highness the Maharaja of Mysore is pleased to extend the provisions of the said Act to the whole of the State of Mysore with effect from the "first day of October 1951."

This aspect of conflict between the Central Act (T.P. Act) and the local Act (House Rent Control Act) was, on the previous occasion, considered to be very important & occupied much time needless as it now seems) for argument at the Bar. It is

obvious that no conflict did exist on 22-7-1951 between the Central Acts and the local Act. It may incidentally be observed that the House Rent Control Act which was adopted by the State Legislature was, during the relevant time of the disputed period, pending the assent of the President of the Union of India, which was given on 16-8-1951.

8. Some other questions of law such as *res judicata*, acquiescence and consent which were raised by the petitioners & discussed by us in the appeal are not controversial questions as the principles involved therein have long since been settled. What the petitioners questioned in the appeal decided by us and seek to question before the Supreme Court, is not the correctness of the said principles themselves but their application by us to the facts of the present case. Conceding for a moment that the contention of the petitioners that our application of those principles is incorrect, yet the said contention by itself does not warrant the grant of a certificate as the alleged incorrect application is not a sufficient ground to conclude that the case is a fit one for appeal to the Supreme Court as involving a substantial question of law of such general application as to require the highest (Court?) of the realm to adjudicate upon, Amongst several authorities available on this point in the Indian High Courts, some of the latest are these: "*Noor Mahomed v. Sedmal*" AIR 1953 Hvd 177 (A); *Bishen Singh and Others Vs. Mt. Kishno and Another*, ; *Chinnaswami alias Narayana Reddiar Vs. Nallappa Reddiar*, ; "*Abdul Majid Khan v. Datto Raoji*" AIR 1946 Nag 307 (Di and "*Amrit Lal v. Behari Lal*" AIR 1932 Lah 56 (1) (E).

In addition, the following extract from the judgment of his Lordship the Chief Justice of the Bombay High Court, reported in -- *Kaikhushroo Pirojsha Ghiara Vs. The C.P. Syndicate Ltd.*, . may be quoted in extenso and if we may say so with the greatest respect to the Chief Justice it aptly describes the position. "Now, in order to determine this question one or two very fundamental principles have to be borne in mind. The first is that the Court of Appeal in this Province is the final Court; it is the final Court normally and ordinarily. The other principle is that law favours a finality in litigation and that it is only in the special circumstances laid down in the Code, that a litigant is entitled to travel outside the Province and go to the highest Court in the realm, which is now the Federal Court. When the trial Court & the Court of Appeal have concurred in their judgment, it is for the petitioner to satisfy the Court of Appeal, before which he comes for leave to appeal to the Federal Court, that a substantial question of law arises which requires further deliberation and adjudication by the highest Court. Frankly, it is not at all easy to determine what a substantial question of law contemplated by Section 110, Civil P.C., is. The only guidance that we have had from the Privy Council is that substantial question is not necessarily a question which is of public importance.

"It must be a substantial question of law as between the parties in the case involved. But here again it must not be forgotten that what is contemplated is not a question of law alone; it must be a substantial question. One can define it

negatively. For instance, if there is a well established principle of law and that principle of law is applied to a given set of facts, that would certainly not be a substantial question of law. Where the question of law is not well settled or where there is some doubt as to the principle of law involved, it certainly would raise a substantial question of law which would require a final adjudication by the Highest Court."

Even otherwise the case is not of sufficient private importance to both the parties in the sense in which it is generally understood so as to deserve consideration on that ground vide -- "Muthayala Chetty v. Appajiah Setty & sons" ILR (1951) Mys 423 (G). No other case of the nature giving rise to conflict has arisen during the short interval between 1-4-51 and 16-8-51 of the alleged repugnancy of the local law before it received the assent of the President. In the light of the matter discussed above, it can hardly be said that the present case has features which satisfy the requirements of any of the clauses of Article 133 of the Constitution. Leave to appeal to the Supreme Court asked for is, therefore, refused.

9. In conclusion we cannot help remarking that the petitioners have, in our opinion, very needlessly tried to involve themselves and possibly the respondent, in heavy expenditure by intending to take the case to the highest Court in the land occupying its valuable time while they can obtain their remedy without delay nearer home and at a cheaper cost. Their course is obviously very simple. They may, if they so choose, approach the House Rent Controller with a request to permit the Civil Court to execute the decree enabling the petitioners to obtain possession for running a hotel after making out a bona fide case therefore.

10. Before we finally part with the case, we think it our duty to advert to one of the grounds mentioned in the memo of appeal proposed to be filed by the petitioners in the Supreme Court, Ground No. 15, though not pressed before us in the arguments, is in the nature of a complaint or a grievance against the High Court, that the petitioners were not permitted to argue their case in appeal in extenso & were merely asked to file a list of authorities, implying thereby that the filing of the list was in substitution of a full argument at the bar. The facts are otherwise. The petitioners were heard in the first instance so early as March 1953 by another Bench of this Court of which one of us was a member, when time was taken by them to furnish some information required by the Court. The appeal then came up again before the present Bench in March of this year, when the petitioners were heard for the greater part of one day and the whole of the second day. While citing a number of decisions during the course of the arguments, the petitioners also submitted that in support of their argument they would file a list of additional authorities to which the Court acceded and they did so. The references mentioned by them in the list were all perused and the important ones, having a bearing on the case under consideration, were duly noticed in the order rejecting their contentions. The suggestion made is therefore baseless.

11. In the result, the petition is dismissed with costs. Advocate's fee Rs. 100/-.

12. Petition dismissed.