

(2016) 02 KAR CK 0390
In the Karnataka High Court
Case No : Regular First Appeal No. 305/2011

Chinnaswamy Setty and Others

APPELLANT

Vs

Hemadri Associates and Others

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Citation : (2016) 02 KAR CK 0390

Hon'ble Judges : P.D. Waingankar, J.

Bench : Single Bench

Advocate : H.R. Ananthakrishna Murthy, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Waingankar, J.—1. By judgment and decree dated 23.10.2010, the suit filed by the plaintiffs in O.S. No. 1381/2007 against the defendants for possession of the schedule property and for damages at the rate of Rs. 25,000/- per day from the date of termination of tenancy came to be dismissed by 44th Additional City Civil and Sessions Judge, Bangalore. Aggrieved by the judgment and decree, this appeal is preferred by the plaintiffs.

2. The parties are referred to as they are referred to in the original suit. The appellants are referred to as "plaintiffs" and respondents as "defendants".

3. The plaintiffs are claiming to be the owner of property bearing Municipal No. 74, 74/1, 75, 76, 77, 78 of Gubbi Thotadappa Road, Corporation Division No. 13 (Old) No. 21(New), Bangalore as shown in the sketch appended in the plaint by letters A, B, C, D, E, F, G, H, J, K, L, M, A. The suit schedule property is the portion of the aforesaid property shown in the sketch. Plaintiff Nos. 1 and 2 along with father of plaintiff Nos. 4 to 8 and husband of plaintiff No. 3 late Sri. B. Subbarama Setty had entered into a Lease Deed with defendant Nos. 2 to 14 and Smt. R.S.L. Kantha for and on behalf of defendant No. 1 dated 04.07.1986 in respect of suit schedule property. The defendant Nos. 2 to 14 claim that they have formed association of persons in the name of defendant No. 1-M/s. Hemadri

Associates. As per the terms and condition of the Lease Deed dated 04.07.1986, defendant Nos. 1 to 14 were required to construct a multistoried building and a hostel building in the schedule property within three years from the date of the Lease Deed and if such construction is put up, it should vest in favour of the plaintiffs. But the defendant Nos. 1 to 14 failed to construct hostel. Instead they sub-lease the schedule property to defendant No. 15 in violation of the terms of the Lease Deed. However, in violation of the terms and condition of the Lease Deed, the defendants have created sub-lease on 06.05.2002 in favour of defendant No. 15 without constructing multistoried building or hostel building. Thus, according to the plaintiffs, defendants have violated Clause 5.1, 5.3, 8.1, 8.3 and 10 of the Lease Deed. As such, the tenancy of defendant Nos. 1 to 14 was terminated by issuance of a notice dated 13.12.2006 by the plaintiffs. Again another termination notice was issued dated 18.01.2007 and the defendants were called upon to vacate and handover the vacant possession of the schedule property including the construction made therein by defendant No. 15 M/s. Hotel City, Centaur International Pvt. Ltd., Therefore, the defendants were called upon to vacate and handover the schedule property by issuance of termination of lease. In response to the termination notice, the defendants failed to vacate and handover the vacant possession by demolishing the construction put up. As per the terms of the Lease Deed, for the first four years from the date of the Lease Deed the rent was Rs. 2,000/- per month. After the expiry of four years for further period of seven years the rent was Rs. 10,000/- per month and thereafter for the next ten years the rent was Rs. 12,500/- per month. Since the defendants failed to comply the notice, the plaintiffs filed a suit for possession and damages at the rate of Rs. 25,000/- from the date of termination of tenancy.

4. In response to the suit summons, the only defendant who filed written statement is defendant No. 15 who is running a hotel in the schedule property under the name of M/s. Hotel City Centaur International Pvt. Ltd., in its written statement, defendant No. 15 has contended that the suit is not maintainable either in law or on facts" frame of the suit is bad in law, the suit is not properly valued, there was no cause of action to file a suit and the alleged cause of action shown in the suit is false and imaginary. Defendant No. 15 admitted that the plaintiffs are the absolute owners of the schedule property and that they executed a registered Lease Deed in respect of schedule property in favour of defendant Nos. 1 to 14. Further, it is contended that defendant Nos. 1 to 14 completed the construction of the building and since defendant No. 15 had taken on sublease the schedule property in order to start a boarding or lodging hotel, constituted a company by name Hotel City Centaur International Private Ltd., with 120 rooms, 4 banquet halls etc., etc., When everything was ready, the plaintiffs with malafide intention filed a suit to harass defendant No. 15 to secure additional monetary benefits though they were aware of the transaction entered between the defendant Nos. 1 to 14 and defendant No. 15. It is also contended that defendant No. 15 had met the plaintiffs in person and had appraised them of the arrangements being made to open a hotel and international standards and it

is only after defendant No. 15 was assured of their concurrence that the transactions between the defendant Nos. 1 to 14 and defendant No. 15 materialized and accordingly a deed of sub-lease came into existence and under these circumstances, the plaintiffs have no subsisting or enforceable right either to terminate the tenancy or initiate any legal proceedings. It is also contended that defendant No. 15 had undertaken to construct a hostel building and it is ready. The delay in completion of hostel building is mainly due to the indifference of the plaintiff since plaintiffs were busy in completing construction of the Anjaneya Temple and the installation of idol. So far as arrears of rent is concerned, it is contended by defendant No. 15 that rents were being regularly tendered to the plaintiffs and off late the plaintiffs refused to receive the rents under some pretext or the other even though rents were being tendered in person. It is further submitted that the termination of the tenancy is not inconformity with Clause 16 of the Lease Deed. Further, it is submitted that defendant No. 15 is in lawful possession of the schedule property as a sub-lessee and is in bona fide occupation of the schedule property. It has invested rupees 15 crores in the business and rupees 7 crores has been raised as loan from financial institution and the remaining period of lease has been mortgaged and about rupees 8 crores has been pumped by defendant No. 15. It is contended that defendant No. 15 has got prima-facie case. The termination clause has been invoked by misrepresentation. There is no merit in the suit filed by the plaintiffs. For all these reasons, defendant No. 15 sought for dismissal of the suit with costs.

5. Based on the pleadings, the following issues were framed by the Court below:--

"1. Whether the plaintiff proves that the defendants No. 1 to 14 have violated the terms of Lease Deed dated 4.7.1986 as contended in the plaint?

2. Whether plaintiffs prove that the Lease Deed dated 4.7.1986 prohibited lessees therein entering into any arrangement for the purpose of construction except with their family members?

3. Whether the defendants prove that they are entitled to enter into sub-lease agreement dated 6.5.2002 and the same is not contrary to the terms of the Lease Deed dated 4.7.1986? And that plaintiffs were aware of the same?

4. Whether the 15th defendant proves the oral understanding with the plaintiff as pleaded in para 10 of the written statement and payment of Rs. 4.00 lakhs to the plaintiffs?

5. Whether the 15th defendant proves that because of interference by the plaintiffs as pleaded in para 10 hostel work could not be completed within the time stipulated?

6. Whether the termination of tenancy is in accordance with law?

7. Whether the suit is not maintainable?

8. Whether the suit is not properly valued and payment of court fee is insufficient?
9. Whether plaintiffs are entitled to Rs. 54,166/- towards arrears of rent and Rs. 1,50,000/- to awards damages?
10. Whether the plaintiffs are entitled to damage of Rs. 25,000/- per day?
11. Whether the plaintiffs are entitled for reliefs claimed?
12. What order or decree?"

6. After framing of the issues, in order to prove their case, on behalf of plaintiffs, plaintiff No. 2-B.S. Krishna Murthy adduced his evidence as P.W. 1, Exs. P1 to P26 were marked. On behalf of defendant No. 15, one H.M. Nataraj adduced his evidence as D.W. 1 Exs. D1 to D25 were marked. Learned City Civil Judge on appreciation of evidence recorded a finding that the plaintiffs failed to establish that the sublease has been created in violation of the terms and condition of the Lease Deed entered into between the plaintiffs and defendant Nos. 1 to 14 and thereby the suit came to be partly decreed holding that the plaintiffs are entitled for Rs. 54,166/- towards arrears of rent with 6% interest from the date of the suit till recovery from the defendants.

7. Aggrieved by the judgment and decree dated 23.10.2010, this appeal is preferred by the plaintiffs/appellants.

8. The submission of Sri. Ananthakrishnamurthy, learned counsel for the appellants/plaintiffs is that though ample evidence was placed on record to show that in violation of the terms and conditions of the Lease Deed, defendant Nos. 1 to 14 have created sublease in favour of defendant No. 15. The court below has wrongly held that the sublease created by defendant Nos. 1 to 14 is not in violation of the terms and condition of the Lease Deed and since the termination notice came to be issued before expiry of the lease period.

9. Having heard the submission made by the learned counsel for the appellants and on perusal of material on record and the judgment passed by the court below, the following points would arise for my consideration:--

"i) Whether the Trial Court is justified in coming to the conclusion that the Sub-lease created by defendant Nos. 1 to 14 in favour of defendant No. 15 is not in violation of the terms and conditions of lease-deed dated 04.07.1986?]

ii) Whether the Trial Court is right in holding that the termination notice is prematured since it was issued before the expiry of the lease period?

iii) Whether the judgment and decree passed by the Court below are sustainable in law?"

10. The case of the plaintiffs in short is that they are the owner of the schedule property wherein they are running a hostel for poor students and running a choultry, the structures wherein they are running hostel or choultry have become

old and dilapidated and therefore they wanted to lease out the schedule property for construction of new hostel building, choultry and other structures by demolishing the existing structures standing in the schedule property. They have decided it to give for lease for a period of 40 years. The defendant No. 1-M/s. Hemadn Associates is an association engaged in social work. The Association is formed by defendant Nos. 2 to 14. They came forward to take the schedule property on lease to develop and to construct structures thereon as desired by the plaintiffs-the owner of the property. After negotiation, a Lease Deed came to be entered between the plaintiffs and the defendant Nos. 1 to 14 dated 04.07.1986 as per Ex. P1. As per the terms and conditions of the Lease Deed the defendant No. 1-Association was required to put up new construction over the schedule property within a period of four years and to use the newly constructed building for a period of 40 years and after the expiry of period of 40 years to surrender the building and handover vacant possession in favour of the plaintiffs. It is the case of the plaintiffs that in violation of the terms and conditions of the Lease Deed Ex. P1, the defendant Nos. 1 to 14 without constructing the hostel building and choultry within the stipulated period of 4 years used the schedule premises and on 06.05.2002, they created a sub-lease dated 06.09.2002 as per Ex. P2 in favour of defendant No. 15 who inturn put up construction and running a 3 Star Hotel in the schedule premises under the name M/s. Hotel City, Centur International Private Ltd., without the knowledge of the plaintiffs. Since the defendant Nos. 1 to 14 in violation of the terms and conditions of the Lease created Sub-lease in favour of defendant No. 15, by issuance of a notice dated 13.012.2006, the copy of which is marked as Ex. P3 terminated the Lease dated 04.07.1986 created in favour of defendant Nos. 1 to 14 and called upon them and anyone claiming through them to vacate the schedule premises and to handover the vacant possession. Since they failed to vacate the schedule premises the plaintiffs filed a suit for possession. The defendant Nos. 1 to 15 of course denied the case of the plaintiffs and that they have contended that there has been no violation of the conditions of the Lease Deed by the defendant Nos. 1 to 14.

11. Therefore, what is to be seen is whether the defendant Nos. 1 to 14 created Sub-lease in favour of defendant No. 15 in violation the terms and conditions of the Lease Deed dated 04.07.1986 and whether the notice dated 13.12.2006 terminating the Lease in favour of defendant Nos. 1 to 14 is premature since it was issued before the expiry of Lease period of 40 years.

12. It is not in dispute that the plaintiffs are the owner of the schedule property. It is also not in dispute that the plaintiffs executed a Lease Deed dated 04.07.1986 in favour of defendant Nos. 1 to 14, which is marked as Ex. P1. The period of lease is 40 years from 04.07.1986. As per clause No. 5.1 of the Lease Deed, the Lessees/defendant Nos. 1 to 14 shall construct free of charge a hostel building in the south-western portion of the adjoining premises of the Lessors in the area shown by the letters C, B, P, Q, R, C in the plan appended to the Lease Deed so as to enable the Lessors/plaintiffs to run a students hostel. The Lessees

shall construct the said building in a manner approved by the Lessors of an area of 4,800 sq. ft. within a period of 2 years after obtaining the necessary licence and sanction of plan from the Corporation of City of Bangalore. Clause No. 8 provides for Lessees' right to lease, transfer etc. It reads as under:--

"The Lessees shall in their absolute discretion, be entitled to grant lease/sub lease or enter into arrangements of the nature of Leave and Licence in respect of the whole or any portion of new building/s constructed by them in the schedule property, for any purpose and collect the rents and other charges from such Sub-lessees or licencees provided, however, that the period of such lease/s, sublease/s or licence/s shall not extend beyond the period of this lease."

13. From the above clause, it is manifest that the construction of the new building was to be put up by the Lessees i.e., defendant Nos. 1 to 14 and they were empowered to lease the building or sub-lease or give it on Leave and Licence and to receive the rent. But the period of lease, sublease, licence shall not extend beyond the period of lease entered between the plaintiffs and the defendant Nos. 1 to 14.

14. Clause No. 16 speaks about termination of the lease. It reads as under:

"In the event of the Lessees committing defaults in payment of rents for a term of 3 months consecutively, the Lessor shall serve a notice in writing to the lessees calling upon them to pay up the arrears within two months. If the Lessees failed to pay up the arrears on the expiry of such period, then Lessors may determine the lease, irrespective of the period stipulated in this deed and reenter upon the premises and assume possession."

15. Thus, from reading the termination clause, it is abundantly clear that the lease can be terminated only on account of failure to pay the arrears of rent not otherwise. Of course, clause No. 8.1 speaks about the construction of the hostel building by the Lessees. But the termination clause nowhere says that if the construction is not put up by the Lessees and if it is put up by third person the lease is liable for termination.

16. Ex. P2 is the deed of sub lease dated 06.05.2002 executed by defendant Nos. 1 to 14 in favour of defendant No. 15. Clause No. 4 provides for construction of new structure. It reads as under:--

"The Sub-lessee shall be entitled to demolish the existing structure fully or partly and apply for fresh licence/modified plan/renovate the structure, construct new structure, put up additional construction to carry out regular maintenance works for enhancement of revenue in the Sub-leased premises and to develop the schedule property into a multistoried building. The sub-lessees shall also be entitled to make such extension, additions or alterations to the building from time to time during the period of the Sub-lease."

17. It is also evident that Sub-lessees are authorized to apply for and obtain licences and sanction of the plans for the demolition and proposed construction

from the Corporation of the City of Bangalore/BDA etc. Under the Deed, Sub-lessees are also permitted to grant further lease or enter into arrangements of the nature of the Leave and Licence in respect of the whole or any portion of the new building. There is no termination clause as such in Ex. P2. Thus, from reading the relevant covenants of Exs. P1 and P2 the Lease Deed and sub-lease, it is abundantly clear that without putting up construction for which the schedule property was leased out to defendant Nos. 1 to 14, they created sub-lease in favour of defendant No. 15 who put up the construction not as desired by the plaintiffs but as desired by defendant Nos. 1 to 14. Therefore, it is true that there is a breach committed by defendant Nos. 1 to 14 since they failed to put up a construction of a new hostel building. But termination clause in Ex. P1 Lease Deed does not provide for termination of lease on that ground. The defendant Nos. 1 to 14 were required to put up the new construction by themselves or by their agency within 4 years from the date of Lease Deed Ex. P1. Though till 2002 the new construction was not put up i.e., even after 16 years from the date of the Lease Deed dated 04.07.1986 the plaintiffs have not taken any steps for termination of the lease. Thus, the period within which defendant Nos. 1 to 14 were required to put up new construction has been impliedly waived by the plaintiffs by their conduct. That being the case defendant Nos. 1 to 14 created sub-lease in favour of defendant No. 15 who in turn put up new construction which he has been using as per Clause No. 4 of the sub-lease. Thus, there is no violation of the terms and conditions of Lease Deed Ex. P1 by the defendant Nos. 1 to 14. Moreover, defendant No. 15 has invested huge amount. Therefore, for all these reasons the termination of the Lease in favour of defendant Nos. 1 to 15 by the plaintiffs by issuance of notice is bad in law since the termination Clause does not provide for termination of lease other than the clause for termination of lease on account of failure to pay the arrears of rents. The Trial Court on proper appreciation of evidence rightly held that the termination of the lease is not in conformity with the terms and conditions of the Lease Deed and termination is prematured and thereby dismissed the suit. On my re-appreciation of evidence, I do not find any merits in this appeal.

Accordingly, the appeal is dismissed as devoid of merits.