

(2007) 07 KAR CK 0057

In the Karnataka High Court

Case No : Regulation First Appeal No. 1559 of 2005

Cordcell Private Limited

APPELLANT

Vs

Marazaria Products Pvt. Ltd.

RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : AIR 2007 Kar 162 : (2007) ILR (Kar) 3490 : (2007) 6 KarLJ 148

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : G. Papi Reddy, N.S. Sheshadri and V. Vinod Reddy, for the Appellant;
B.V. Raman and S.V. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi, J.—This is defendant's appeal, questioning the judgment and decree dated 1st September 2005 in O.S. No. 5926/1999.

2. Respondent filed a suit seeking ejectment of the appellant from the suit schedule property on the ground that, the appellant was a tenant on monthly rent of Rs.8,700/- and the lease period expired on 30.6.1999. In this connection, a notice was issued to the appellant interalia terminating the tenancy and also for handing over possession.

3. Appellant contested the suit interalia, alleging that the tenancy is renewed on 27.9.1994 for a period of five years and the lease is perpetual lease, the respondent has no right to terminate the tenancy and further the respondent has no right to terminate tenancy without refunding the advance amount of Rs.52,400/-. Further, that the notice issued by the respondent is not in consonance with the provisions of Section 106 of the Transfer of Property Act.

4. The trial court on appreciation of the evidence, decreed the suit for ejectment, directing the appellant to hand-over vacant possession within 60 days from the date of the judgment.

5. Learned Counsel for the appellant mainly contended that there is renewal of lease on 27.9.1994 for a period of five years and the legal notice is issued on 23.12.1998 whereas, the five years' lease period expires on 30th June 1999 and lease was in force when the legal notice was issued and further the suit is filed on 31.7.1999. He submitted that as on the date of filing of the suit, there was no cause of action. Further suit was premature as the lease period was subsisting and the decree passed on such termination of tenancy is not maintainable. He further submitted that the tenancy is not lawfully determined.

6. Learned Counsel appearing for the respondent - landlord submitted that, even assuming that, the lease period was extended for a further period of five years from 27.9.1994 and the notice is issued even before the expiry of five years' period, that by itself will not disentitle the respondent - plaintiff from seeking a decree, as the date on which the written statement was filed by the appellant, the lease period had already expired. He further submitted that even in case of issue of notice before the expiry of the lease period, the suit does not get vitiated only on that ground, if no prejudice is caused to the respondent and further submitted that, only on the technical ground, the suit cannot be dismissed.

7. In this regard, he relied on a judgment reported in the matter of Vithalbhai Pvt. Ltd. v. Union of India 2005 SAR 299 and submitted that in identical circumstances, the Apex Court has held that, even in case of premature suit, suit need not be dismissed, if on the date of filing of the written statement or on the date of the decree if the tenancy had expired. By relying on the said judgment, learned Counsel for the respondent submitted that the trial court on appreciation of the evidence has found that the tenancy had expired even before the written statement was filed, and has granted the decree, which according to him, does not call for interference.

8. The point that arises for consideration in this appeal is, "Whether the issue of termination notice before the expiry of the lease period would become premature termination and disentitle the plaintiff from seeking the decree if the lease period expires before the filing of the written statement or the decree?"

9. No doubt, the cause of action arises on the termination of the tenancy. In case suit is filed before expiry of lease period and the said lease period expires before the defendant files his written statement, no prejudice is likely to cause to the lessee and the suit cannot be dismissed only on the ground that, the suit is filed before the expiry of the lease period. Plaintiff is required to disclose the cause of action in the suit. However, suit need not be dismissed as premature, if by the time the written statement came to be filed, the parties will know their case and adduce evidence and Court will adjudicate the suit on merit on the issues arising out of the pleading. No manifest injustice or prejudice is caused. In this regard, the Apex Court relying on various judgments has found that, filing of a suit when there is a cause of action though premature does not raise a jurisdictional question. The claim may be well-merited and the Court does have jurisdiction to hear the suit and grant the relief prayed for but for the fact that the plaintiff

should have waited a little more before entering the portals of the Court. In such cases, the question is one of discretion. In spite of the suit being premature on the date of its institution, the Court may still grant relief to the plaintiff if no manifest injustice or prejudice is caused to the party proceeded against. The Apex Court also observed that, it would not serve any purpose and do the ends of justice compel the plaintiff being thrown out and then driven to the need of filing a fresh suit.

10. Facts of the decision relied are identical to the facts of this case, inasmuch as, where a suit is filed even before the expiry of the lease period, where the right to sue has not matured on the date of the institution of the suit, an objection in that regard must be promptly taken by the defendant, the court may reject the plaint if it does not disclose the cause of action, as it dismisses the suit with liberty to the plaintiff to file a fresh suit on its maturity, even plaintiff may himself withdraw the suit at that stage and such withdrawal would not come in the way of the plaintiff in filing the suit on its maturity. In either case, the plaintiff would not be prejudiced. On the other hand, if the defendant by his inaction amounting to acquiescence or waiver allows the suit to proceed ahead then he cannot be permitted to belatedly urge such a plea as that would cause hardship, may be irreparable prejudice, to the plaintiff because of lapse of time. If the suit proceeds ahead and at a much later stage the Court is called upon to decide the plea as to non-maintainability of the suit on account of its being premature, then the Court shall not necessarily dismiss the suit. It is observed by the Apex Court that, it is the responsibility of the Court to examine and promptly dispose of such a plea. The plea may not be permitted to be raised at a belated stage of the suit. However, the Court shall not exercise its discretion in favour of decreeing a premature suit in cases where there is a mandatory bar created by a statute which disables the plaintiff from filing the suit on or before a particular date or the occurrence of a particular event, when the institution of the suit before the lapse of a particular time or occurrence of a particular event would have the effect of defeating a public policy or public purpose, if such premature institution renders the presentation itself patently void and the invalidity is incurable such as when it goes to the root of the Court's jurisdiction and where the lis is not confined to parties alone and affects and involves persons other than those arrayed as parties, such as in an election petition which affects and involves the entire constituency or where leave of the Court or some authority is mandatorily required to be obtained before the institution and was not so obtained. In such circumstances, the Apex Court observed that the suit can be dismissed at any stage of the proceedings.

11. In this case, parties underwent trial by leading the evidence on the issues, now at this stage, raising the question of premature cause of action would certainly cause injustice to the plaintiff and is nothing but defeating the ends of justice. No prejudice has been caused to the defendant, as it is not in dispute that the lease period has expired, asking the plaintiff to file a fresh suit on the ground of premature filing of suit would amount to causing manifest injustice to

him on the ground of technicality. I find that court should not dismiss the suit if the right had accrued to the plaintiff before the defence is filed by the defendant. Ends of justice would not be met by dismissing the suit at belated stage on the ground of premature filing of suit.

12. Appellant by way application under Order XLI Rule 27 of CPC, has sought to produce the lease deeds alleged to have been executed by the respondent - landlord on 27.9.1994 along with earlier lease deeds interalia, showing that lease continue for a period of five years w.e.f. 27.9.1994 and the notice issued by the respondent is even before the expiry of the lease period. No doubt, from the lease deeds produced along with the said application, it is clear that the notice is issued even before the expiry of five years and suit is also filed before expiry of the said period. However, now in this appeal, the lease deed is produced to show that the lease was subsisting as on the date of filing of the suit, in my opinion, appellant is not entitled to raise such a plea at this stage.

13. Even otherwise also, as observed by the Apex Court in the decision (supra), even in case where there is premature institution of suit, it does not by itself prejudice the interest of the appellant and such objection should have been taken at the earliest point of time. It is not now open to him to raise such question after allowing trial court to proceed in the matter and pass the decree. Hence the application under Order XLI Rule 27 of CPC even if allowed will not serve any purpose. Hence, the same is rejected. Except this point, no other contentions are raised.

14. In the light of the decision referred to above and also that the appellant having not raised such a plea at the inception, is not now open to him. I do not find any merit in the contention of the appellant.

Accordingly, appeal fails and same is dismissed.