

(1996) 07 KAR CK 0085
In the Karnataka High Court
Case No : CRP 984 of 1992

Dr. R.R. Khanolkar

APPELLANT

Vs

Madhavi Arun Kamath and Others

RESPONDENT

Date of Decision : 25-07-1996

Acts Referred:

Citation : (1997) ILR (Kar) 800 : (1997) 1 KarLJ 422

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Shantha W. Joshi, for the Appellant; C.R. Goulay, for R-1 and R-2, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—A clear cut point of law which has some rather unusual and interesting facets has been canvassed by the disputing parties in this Civil Revision Petition. Only the relevant facts necessary for the decision of the issue are being set out by me. The petitioner before me is the landlord of the property situated at No. 157. Camp; Belgaum. His case is that one Arun Kamath was his tenant upto the year 1977 when Arun Kamath died. The wife of the deceased-tenant by the name of Shoba Kamath along with her three minor daughter continued in occupation of the premises. In the year 1983 the petitioner-landlord instituted H.R.C. No. 399/83 against Shoba Kamath principally on the ground that she had acquired sufficient and suitable alternate accommodation and that therefore, the landlord was entitled to recover possession of the premises. The suit was contested vigorously by Shoba Kamath and ultimately, a decree came to be passed against her. The matter was carried higher but she was unsuccessful and the decree was ultimately confirmed by the High Court at which time, in December 1990 Shoba Kamath prayed for six months time to vacate the premises. Before expiry of that period, time was extended on her application upto December 1991. Obviously, since the decree had become final and the time period granted by the High Court and elapsed, another round of litigation was

started wherein the two daughters moved the Court by way of a suit bearing O.S. 619/91. The contention raised in this proceeding was that the earlier decree passed by the Court was executable only against the mother Shoba who incidentally was the second defendant in that suit and it was contended that the two plaintiff daughters as also the third defendant who was a minor and also a daughter were not parties to the decree and that therefore the decree came to be executed against them. An application was made to the Court for an interim order restraining the petitioner - landlord from executing the decree against the plaintiffs and the Trial Court after a protracted hearing passed a very detailed speaking order refusing the grant of interim relief. The matter was thereafter carried in appeal and the appeal Court accepted the plea that was put forward on behalf of the plaintiffs who are the respondents 1 and 2 to this petition in their capacities as daughters of the original tenant Arun Kamath and more so since they were not made parties to HRC.399/833 in which proceeding the decree was passed, that the petitioner-landlord was liable to be restrained from executing that decree against them. This order has been impugned in the present Civil Revision Petition. At the commencement of the hearing, Smt. Joshi, learned advocate who appears on behalf of the petitioner submitted that this is a case involving serious malafides. She contended that her client who is the landlord has obtained a decree of a competent Court, that the decree has become final, that this position was accepted by Respondent 2 Shoba who is the mother, that she took full advantage of the indulgence shown by this Court by agreeing to vacate and asking for time, that she also took even more benefit by getting the time extended for a further period, that just before this extended period elapsed, her own two daughters instituted another legal proceeding in which she is the second defendant. The submission was that this is a dear cut case which bristles with malafides and that the filing of the suit constituted a total misuse of judicial process and that in this background, both the facts and the law relating to the case required to be examined and the order passed by the appeal Court should be interfered with.

2. As far as facts are concerned, Smt. Joshi submitted that the appeal Court has grossly misdirected itself in law. Her contention was that the situation has altered drastically after 1977 when the original tenant Arun Kamath died and she submitted that in the year 1983 when the eviction proceedings were instituted against Shoba Kamath, that this was done in her individual capacity as the then tenant of the premises. Her submission is that even if prior to 1977 Shoba was only the wife of the then tenant, that in 1983 after the death of the husband and after 6 years had elapsed her status had altered to that of being a full fledged tenant in her own capacity. She states that this position was never disputed by Shoba at any stage right upto the High Court proceeding when the decree passed against her became final. In these circumstances, learned advocate submits that the appeal Court grossly erred in law by restoring the status quo ante, going back to the days of tenancy of Arun Kamath and accepting the position that by virtue of the relationship between Arun Kamat and the daughters, that

independent rights devolve on them. Learned advocate submitted that it is in this background that she places strong reliance on the decision of this Court in the case of *GOPALKRISHNA SHARMA v. JYOTHI NAGARAM CHICK VENKATASHAMIAH* ILR 1994 Kar. 822.. This Court had occasion to consider the implications of an eviction order passed in H.R.C. proceedings and the question as to whether that decree binds persons claiming tenancy under the original tenant. This Court had occasion to refer to the following decisions:- 1) *Paramound Industries Vs. C.M. Malliga*, ; 2) *ADIGA v. GOVINDARAJULU* 1988 (3) KarLJ 392; 3) *D.K. Pandey Vs. Abdul Azeez*, ; 4) *MOHAMMED v. SARABI* 1977(2) KarLJ 53 and 5) *MAHANTAPPA v. JAYANTHI* 1980(2) KarLJ 313 After a detailed consideration of the law on the point, and particularly the observations of the Supreme Court in *D.K. Pandey*'s case wherein the Court observed:

"When a person has no independent status as a tenant and is enjoying the premises in the tenancy created in favour of the tenant he has no independent right regarding tenancy and he is bound by the eviction order passed against the tenant."

The law has virtually been settled by this decision whereby the vexed question as to who would be covered by the decree passed in such H.R.C. proceedings irrespective of whether they were formal parties to the litigation or not has been set at rest. It is principally on the basis of this decision that the petitioners learned advocate submitted that the present respondents 2 and 3 have no independent rights whatsoever and that therefore, the granting of the injunction order in their favour is erroneous in law.

3. Mr. Goulay, Learned Counsel who represents the respondents has seriously contested this position. In the first instance, he places strong reliance on a decision of the Supreme Court reported in *Textile Association (India) Bombay Unit Vs. Balmohan Gopal Kurup and another*, . Learned Counsel submitted that the Supreme Court was dealing with a more or less analogous situation where a decree had been passed against the mother and brother but not against two of the other brothers and the question arose as to whether that decree could be executed against the last named persons. The Supreme Court conclusively held that since on the facts of that case two remaining brothers who were not parties to the suit were entitled to claim that their independent rights did not stand extinguished on the passing of the decree, that it could not be executed against them and the Supreme Court therefore set aside the decree remanding the matter to the Trial Court with a direction that the remaining two brothers should be added on as parties to the suit and that it should be disposed of according to law. Learned Counsel submitted that this is precisely the principle which is applicable in the present case. He stated that he is not for a moment contending that the mother Shoba is entitled to any protection vis-a-vis the execution of that decree. His case is that merely because a decree has been passed against Shoba which the petitioner is entitled to execute, that this decree cannot be extended to cover the three daughters who, according to the Learned Counsel have acquired

distinct and separate rights by virtue of the fact that they are the daughters of the original tenant Arun Kamath and were residing with him in the premises on the date of his death. The submission therefore is that the appeal Court was fully justified in having upheld the independent status of respondents 1 to 3 and that consequently the order of the appeal Court is liable to be confirmed. Mr. Goulay did submit that quite apart from the statute provisions, that it is well settled that family members and dependents do inherit rights in respect of residential tenanted premises and he submits that it is this aspect of the law that he is citing for purposes of damming protection against the decree passed against the mother. I need to first of all point out that on facts there is considerable difference between the situation that arose before the Supreme Court and the one present before me. In that case, there was no change of tenancy whatsoever and therefore the straight position in law was that the decree passed against some members of the family without making the other parties could definitely not be executed against those whom the decree was not directed against and that therefore their rights did not stand extinguished by virtue of that decree. In the present case, the appeal Court has completely lost sight of certain aspects of the matter namely that after 1977, the status of the wife Shoba has completely altered. The changed position that came about was that Shoba was paying rent of the premises but more importantly, the landlord has accepted her as the tenant of the premises and that it was in this capacity that he sued her in H.R.C. 299/83. The tenant Shoba herself did not dispute her position at any point of the litigation right upto the High Court. Under these circumstances, the present case is distinguishable on facts from the Supreme Court decision referred to by me earlier. This is a case in which the tenancy rights that vested in Shoba stood extinguished on the passing of the decree against her. Any other persons, whether belonging to her family or otherwise who were resident in the premises which includes the daughters, could only claim rights through her and these rights were dependent and co-extensive with Shoba's right and on the passing of the decree against Shoba, the position that emerges in law is that the rights claimed by the remaining family members also stand extinguished.

4. I need to observe in passing that the respondents Learned Counsel Mr. Goulay contended that the daughters had independent rights which had nothing to do with the status of the mother who can only be treated as one of the four legal heirs of deceased Arun Kamath. As indicated by me. Mr. Goulay submitted that undoubtedly Shoba was the wife and one of the legal heirs but that the three daughters by virtue of the fact that they were daughters of the deceased tenant Arun Kamath are entitled to claim independent rights or protection as the case may be from eviction by virtue of their being the daughters of the deceased tenant. He submits that had these persons been made parties to the proceeding, the position might have been different but in so far as they were not made parties to the proceeding and are not therefore bound by the decree, that their original status and rights remain unaltered and that therefore the decree can never be executed against them. As regards this argument, one needs to

examine it from a slightly different angle namely that it is incorrect to draw any barriers or distinctions between the wife and the daughters because they were all family members of the deceased tenant. Assuming for purposes of argument as submitted by Mr. Goulay that the petitioner-landlord had sued for eviction in their capacity as legal heirs of the deceased tenant, the fact still remains that the daughters were minors at that point of time and were represented by none other than their only natural guardian who in the present case happen to be the mother who in turn was the defendant in that proceeding. When the decree was passed against her, that decree would necessarily include the minors who were under her care and who were her family members, and who cannot claim in these circumstances any rights or protection other than that she had claimed. Viewed at from this angle, it would be impossible to uphold the submissions canvassed by Mr. Goulay.

5. It is having regard to this situation that the dear legal position is required to be applied to the facts of the present case. In my considered view, the Learned Appellate Judge has erred in holding that the respondents 1 and 2 who were the original plaintiffs in O.S. 619/91 are entitled to an injunction order restraining the defendant No. 1 who is the petitioner-landlord from executing the decree against them. The interim order proceeds entirely on a wrong understanding of the law and in these circumstances it is imperative that this Court must interfere with that order.

6. Mr. Goulay, respondents learned advocate reiterated the position in law as enunciated in the case of Paramount Industries Vs. C.M. Malliga, wherein a Division Bench of this Court has occasion to examine in detail. The basic proposition that often falls for determination before the Courts viz as to who would be eligible to obstruct the execution of a decree and whether it is necessary for such a party to institute separate proceedings for this purpose. The Division Bench after considering the case law on the subject in considerable detail and after referring to several decisions, held, that it would be a travesty of justice to conclude that a person who is not a party to a decree and who at the same time has independent legal rights is ineligible from obstructing the execution of that decree and that it is necessary for that party to independently establish through separate proceedings the rights that are pleaded. Mr. Goulay submitted that the order of the appeal Court heavily relies on this decision and that he has also placed reliance on this case in support of his proposition that the independent rights that are vested in the daughters who are the plaintiffs in O.S. 619/1991 require to be upheld. The main thrust of his argument emanates from the fact that these girls were admittedly not parties to H.R.C. 399/83 and are therefore not mentioned in that decree. The proposition of law as laid down by the Division Bench represents the well crystallised and well settled position of law. There can be no two opinions about the correctness of these proposition but it is equally essential to ascertain as to whether those principles ipso facto apply to the facts of the present case. I have had occasion to examine this aspect of the matter because it goes to the very root of the entire dispute and I have also

held that there has been a change of status after the death of the father in 1977 when the mother in her own right became the tenant in respect of the premises and that therefore long after a decree has been passed against her which decree has become final, it is wholly impermissible for the daughters to refer to the status quo ante and contend that they have independent legal rights. It is this last aspect of the matter that is condition precedent for the enforcement of the principles laid down by the Division Bench. On facts since respondents 1 and 2 before me cannot be said in law to have possessed any independent legal rights in respect of the premises in dispute, the application of this judgment to the present case was completely erroneous. It is for this reason that the submission requires to be rejected.

7. It is in these circumstances that the Civil Revision Petition is allowed. The impugned order is set aside. The interim order stands vacated. The Civil Revision Petition having been disposed of, the Trial Court is directed to take up the suit if at all anything survives in it and to dispose of the same according to law.