

(1995) 02 KAR CK 0002
In the Karnataka High Court
Case No : M.F.A. No. 2763 of 1994

Farhathunnissa

APPELLANT

Vs

Rahimunnissa

RESPONDENT

Date of Decision : 20-02-1995

Acts Referred:

Citation : (1995) ILR (Kar) 1153 : (1995) 2 KarLJ 148

Hon'ble Judges : Saldanha, J

Bench : Single Bench

Advocate : M.L. Dayananda Kumar, for the Appellant; S. Shekar Shetty, for the Respondent

Judgement

Saldanha, J.—This Appeal is directed against an interim order passed by the learned Judge presiding over the XV Additional City Civil Court, Bangalore City, dated 26.11.1994 in O.S.No. 2204/1994.. It is unnecessary for me to go into detailed recitals because the two plaintiffs before the trial Court who are the respondents herein claim to be the daughters of one Syed Habibulla. They are the married daughters and the dispute pertains to certain non-residential premises in respect of which the deceased father was the tenant. After his death, the wife and two sons claim to be the persons on whom the tenancy rights had devolved and the contention was that one of the sons was running a watch repairing business in the premises after the death of the father in 1984. The other son who was residing separately had nothing to do with these premises. The Rent Control Court passed a decree of eviction in the year 1989 and it is relevant to point out that the matter was carried in Revision to this Court and the C.R.P.No. 2919/1987 came to be finally disposed of by this Court in the year 1992. The decree was finally confirmed and at the request of the petitioners, the Court granted them a period of two years time to restore the possession. Obviously, on the expiry of that period of time if the possession was not restored the original decree could have been executed. When almost two years had elapsed in 1994, the present suit is filed by the two married daughters wherein it

is contended that they ought to have been made parties to the original litigation, that the decree in question does not bind them, that they have independent rights and that consequently, they are entitled to a injunction simpliciter restraining the landlords from executing the decree of the Rent Control Court against them. The learned trial Judge after an elaborate hearing and a very careful consideration of the material placed before him and in particular, the law on the point came to the conclusion that the objections raised by the plaintiffs before him were justified, that they had an independent right as heirs of the deceased tenant which was unaffected by the decree and that consequently, they were entitled to an injunction order, as prayed for. It is against this order that the present Appeal has been filed.

2. This is a litigation that has had a long history and the grievance canvassed at the stage of admission was that the interim injunction order passed by the learned trial Judge is unjustified insofar as it is not permissible for this Court to have restrained the respondents from executing the final decree and that in these circumstances, interference was called for. In support of the Appeal, the appellant's learned Advocate has submitted that the original tenant having died the only protection that the law envisages is with regard to a restricted category of persons and that those rights have been completely extinguished on the passing of the decree by the Rent Control Court which has now become final. It is submitted that the persons who had claimed any right in respect of the premises and who claim to be in possession thereof were rightfully made parties and heavy reliance is placed on the pleadings before that Court which undisputedly indicate that it is only one of the sons who had contested that proceeding and who claimed protection under that Statute. There is a clear-cut unequivocal statement made before the Court to the effect that none of the other parties are either in possession or claim any rights and in these circumstances, the appellant's learned Advocate has advanced the submission that the Decision of the Supreme Court reported in Pushpa Rani and Others Vs. Bhagwanti Devi and Another, would apply squarely to the facts of this case. While considering a situation of the present type, the Supreme Court as far as non-residential premises are concerned, upheld the view that where it is specific from the pleadings that only the party before the Court is claiming protection or rights and where it is very clear that the other parties have not come forward to agitate any such rights, the principle of implied surrender must apply and the Supreme Court consequently held that the decree passed against the contesting parties is a final one which binds all the heirs. It is the conduct of the remaining heirs that the Supreme Court took cognizance of and in these circumstances, the Supreme Court held that the fact that they had not put forward any independent claim while the litigation was alive is concrete and conclusive proof of the fact that there was an implied surrender. Applying this principle, the appellant's learned Advocate submitted that the plaintiffs before the trial Court have no right whatsoever and that the learned trial Judge has grossly erred in law in having passed the interim order in question. The appellant's learned Advocate also re-

enforced his argument that the decree passed by the Court which is binding vis-a-vis the original defendants is also binding against the remaining persons, namely, the present plaintiffs and in this regard, he placed reliance on a Decision of this Court reported in *Gopalakrishna Sharma Vs. Jyothi Nagaram Chick Venkatashamaiah*, wherein, while considering a similar situation under the Karnataka Rent Control Act this Court held that in the absence of a party having set up an independent claim, that the decree passed by the Karnataka Rent Control Court binds all persons who are claiming under the original tenant.

3. Appearing on behalf of the respondents who are the original plaintiffs, Mr. Shetty sought to distinguish these two Decisions. As regards the Decision in *Gopalakrishna's* case, it is his submission that the plaintiffs are agitating their individual and independent rights in their capacity as heirs of the original tenant and that they are in no way concerned with any statements that may have been made in the course of the earlier legal proceedings to which admittedly they had not been made parties. It is his submission that as daughters of the original tenant, they were necessary parties to the original proceeding and since they were not party-defendants, they are in no way bound by the decree and that this Court has taken the view that it is open to a person who is not bound by a decree to independently move the Court and agitate their rights. The principle enunciated by the Division Bench of this Court is not to be construed in a vacuum but has to be construed in relation to the facts of a case but more importantly in relation to the nature of the proceedings that we are concerned with. The rights that the plaintiffs are now seeking to agitate are rights that have relation to the law that can only flow from their having been the daughters of the deceased tenant. What is wrongly construed as an independent status or an independent right is in fact a wholly dependent one and something that owes its existence entirely to the relationship with the original tenant. There again, one needs to take cognizance of the fact that a right of title or ownership is very different to the limited protection that the law may afford to a relative of a deceased tenant or one who was dependent on the tenant or residing with the tenant at the time of the tenant's death. It is only a very limited protection that derives and for good reason. Under these circumstances, that status of legal protection from eviction cannot be wrongly construed as an independent right or a independent status and taken to be on par with the situation that may arise in other proceedings. The significant fact remains that the two plaintiffs did not at any time put forward any independent claim with regard to the tenancy rights for several years they did not agitate any such position while the proceeding was before the Rent Control Court or for that matter earlier when it was before this Court. Even in the present proceedings, there is no case made out that they were in possession of the premises at any time or that they were in any way connected with the business. The restricted plea that is canvassed being that they were getting some income out of the business that was being carried on there. The point of time at which this suit has been filed speaks volumes and the lack of material produced before the trial Court is also of considerable

consequence. It is in relation to these factors that this Court will have to consider whether the learned trial Judge was right in affording them an independent status or in holding that they ought to have been the necessary parties to the earlier Rent Control Proceedings and in the absence thereof that the decree does not bind them.

4. Mr. Shetty also sought to distinguish the Decision of the Supreme Court reported in Pushpa Rani and Others Vs. Bhagwanti Devi and Another, by pointing out that the act of implied surrender according to him is something that can only be determined on the basis of the evidence. He states that the suit has just been filed, that the evidence has not been led before the trial Court and under these circumstances, it- would be premature to hold that this is a case of implied surrender. To my mind, it is a misreading of the law insofar as the record of this case does not consist only of evidence at the trial but of the previous proceedings, the fact that the two plaintiffs are married daughters, the fact that the premises are non-residential premises, the fact that they had never claimed to have been in possession thereof or participated in the business carried on there and therefore very correctly had never set up any claim in respect of the tenancy that was a contract between the landlord and their father, are all factors or pointers which would conclusively indicate that even assuming in theory, that the principle of heirship would apply, that this is a case where the principle of implied surrender will hold good and if that is so, the decree passed by the trial Court would certainly bind them. On a careful consideration of the law, I am of the view that both the aforesaid Decisions apply to the facts of the present case.

5. Mr. Shetty has relied on a large number of other Decisions which I shall deal with briefly. In the first instance, he has drawn my attention to an order passed in C.R.P.No, 2919/1987, dated 2.11.1990 wherein, the learned Single Judge of this Court had occasion to remand the matter on the ground that some of the legal heirs had not been impleaded in a H.R.C. proceedings. Mr. Shetty submitted that this Decision very clearly lays down the proposition that all the legal heirs are necessary parties to such a proceeding and he consequently submitted that in the absence of the present plaintiffs having been made a party to the original proceedings, that the decree cannot be said to bind them. Every Decision is virtually a Decision on the facts of that case. The facts in that C.R.P. were dissimilar to the ones in the present case and more importantly, the Decision of the Supreme Court in Pushparam"s case, was not before the Court at that point of time. Under these circumstances, though there is no quarrel with the proposition laid down in that Decision, to my mind it would have no application to the present proceeding.

6. Mr. Shetty relied on a Decision of the Supreme Court in Tara Chand and Another Vs. Ram Prasad, . The question was as to whether even after the determination of a contractual tenancy whether a tenant continues to have a heritable property interest, Mr. Shetty sought to submit that it is precisely this interest that is being agitated in the present proceeding, To my mind, the

argument itself is thoroughly misconceived and the Judgment would have no application because at no point of time immediately after the death of the tenant did the present plaintiffs seek to agitate their so called right that is now being talked about. It is well settled law that such a right can only be agitated before the Special Court that has been set up under the Rent Control Act and therefore, in the absence of any such right having been even so much as agitated at any point of time to theoretically seek to apply the ratio of the aforesaid Decision would really be a misapplication of the law.

6a. The next Decision relied on by Mr. Shetty is a Decision of the Supreme Court reported in *Gian Devi Anand Vs. Jeevan Kumar and Others*, The question arose in that case as to whether a statutory tenancy is heritable and certain rights were sought to be agitated on that basis, the position in law was clarified by the Supreme Court and to my mind, the question before this Court is not the aspect as to whether any right or legal rights can be said to be in existence at the time when the present suit has been filed. For the reasons set out by me supra, it is clear that the answer is in the negative. Therefore, the Decision in question cannot assist the present respondents. Mr. Shetty thereafter sought to rely on another Decision of the Supreme Court reported in *Neelavathi and Others Vs. N. Natarajan and Others*, While construing the position under the Court Fees Act the question as to whether a co-owner is liable to pay deficit Court fees, the Court observed that one co-owner's possession was on par with the possession of other co-owners for purposes of that Act. Mr. Shetty seeks to argue, on an analogy, that the possession claimed by the brothers would hold good vis-a-vis the present plaintiffs. To my mind, this is a total misreading of the Decision which would have no application whatsoever either on facts or in law to the present proceedings.

7. Mr. Shetty thereafter sought to rely on a Division Bench Decision of this Court reported in *B.H. Rangaswamy and B.H. Jalajakshi Vs. Mysore Arts and Wood Works*, In that case, the question arose as to whether a decree passed against a tenant in certain circumstances would bind the sub-tenant. The Court had clarified the law which again was on the facts of that case to the effect that a lawful sub-tenant had a separate and distinct independent rights and that such a person was not necessarily bound by the decree. That proposition is totally extraneous to the present case because the plaintiffs have independently claimed lawful subtenancy and therefore, to my mind the case on the point has no application whatsoever. Next, Mr. Shetty sought to rely on another Decision of this Court reported in 1984 KAR.L.J. 72, *K. Abdul Subhan - Since deceased by L.Rs. Vs. A.K. Satyanarayana Setty*, In that case, the death of a tenant had occurred in the course of certain proceedings and a contention was adopted that the legal heirs cannot continue with the litigation as they were not independent parties as on the date of the commencement of the litigation. The Court negated this plea principally on the ground that on the death of the original tenant, the legal heirs stepped into the shoes and therefore, they have every right to continue with the litigation. To my mind, both on facts and in law the

Decision in question and the proposition of law laid down therein do not in any way assist the present respondents insofar as the issues before the Court in that case were entirely distinct and different to what the Court is deciding in the present proceeding. Next, Mr. Shetty relied on another Division Bench Decision of this Court reported in *Paramount Industries Vs. C.M. Malliga*, The two points before the Court as to whether a person not a party to the original decree, has a right to obstruct and secondly, whether the objections filed require to be first decided prior to the execution or whether the decree must be executed and the only remedy open to the party is to file a suit for restoration thereafter. The issues before the Court in that case and the present proceedings are distinctly different. The present plaintiffs are not obstructionists, they have filed an independent and separate suit and in any event, the situation with them now faced with the decree is that the decree has reached the stage of finality and is being executed and under these circumstances, the academic issues that were settled by the Court in the aforesaid Division Bench Decision would not to my mind be of any assistance to the present respondents. Next, at this stage, Mr. Shetty drew my attention to two Decisions, the first *Shridhar Vs. Nagar Palika, Jaunpur and Others*, wherein, the Supreme Court had disapproved of the view of one Single Judge disagreeing with the view of another Single Judge and had directed that in such instances matters should be referred to a Division Bench. More or less the same proposition has been laid down in the Decision reported in *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, whereby, the Supreme Court once again reiterated that Judges are bound by precedents and procedures. Mr. Shetty submitted that the aforesaid principles on the basis of which he is relying constitute well settled law that has been laid down by various Judicial Decisions of this Court and the Supreme Court and that consequently, this Court is bound by the law laid down in those Decisions. There is no quarrel with regard to the principles laid down in the aforesaid two Cases and I need to add that the principles of law enunciated in the Cases cited by Mr. Shetty are well accepted principles with which I am in complete agreement. It is necessary however to ascertain as to whether these apply to the facts of the present case and further more, to take note of the further developments in the law such as for instance the Decision of the Supreme Court in *Pushparam's case* referred to by me supra. It is in the light of this position that it is unnecessary to impertinently point out to this Court that this learned Single Judge of this Court is bound by the law as laid down in the aforesaid Cases. Lastly, Mr. Shetty submitted that this is a Miscellaneous First Appeal and he contended that the Supreme Court in the case reported in *Uttar Pradesh Co-operative Federation Ltd. Vs. Sunder Brothers of Delhi*, had occasion to point out that an Appeal Court should not interfere with the exercise of discretion by the trial Court unless it appears to be capricious or unreasonable. That case was a proceeding under the Arbitration Act and the Civil Court had intervened in the matter because of the special circumstances of the case. When the matter was carried in Appeal, without there having been valid grounds which were to be pleaded, the Appeal Court had interfered with the order passed by the

Subordinate Court which was why the Supreme Court had occasion to observe that such interference was unwarranted. Mr. Shetty's submission is that the learned trial Judge has applied his mind to the facts of the case, that he has considered both the material placed before him and the law on the point and in these circumstances, that merely because another view is possible, it is not justifiable for this Court to interfere in Appeal. The contention raised by Mr. Shetty would hold good as far as appraisal of the evidence is concerned. In this case, we are concerned with the application of the law and deciding purely legal issues. In the first instance, the learned trial Judge has erred in law in having passed an injunction order in the face of a decree that has become final up to the High Court and which was executable in the face of the legal position which prohibited the granting of such injunction. The order passed by the learned trial Judge is manifestly wrong in law and it is not a question that any other view is possible, but it is a question of a totally wrong view taken by the Subordinate Court being corrected by the High Court. The function of providing for an Appeal in such cases is precisely in order to rectify legal errors and therefore to my mind, the observations of the Supreme Court which undoubtedly hold good in all such cases as the ones which were before the Supreme Court in that instance are distinguishable from the facts of the present case.

8. I need to observe that the appellant's learned Advocate pointed out, and perhaps with some justification, that this is a case in which long after the death of the original tenant and long after the sole legal heir who claimed to be in possession and using the premises has lost the litigation up to the High Court and has undertaken to restore possession, that two other family members who were never on the scene for the last more than one decade approached the Civil Court which admittedly cannot exercise jurisdiction in respect of H.R.C. cases, seek an injunction simpliciter whereby, a decree of a competent Court is sought to be stopped from being executed. This would almost constitute a perversion of law and misuse of Court machinery for the reason that long after a proceeding was concluded if this procedure were to be sanctioned, it would be open to some other family member to re-commence the entire litigation and taking advantage of the arrears and delays prevalent in the Courts, continue in occupation and possession for decades together. This is not the scheme of the law and when such a situation is pointed out to the High Court, it is very much incumbent and in the public interest that corrective action be taken.

9. The Appeal accordingly succeeds. The interim order passed by the trial Court is quashed and set aside. In the circumstances of the case, there shall be no order as to costs.