
(1977) 03 KAR CK 0006
In the Karnataka High Court

Gajanan Krishnarao Ramdurg

APPELLANT

Vs

V.S. Siddannavar and Others

RESPONDENT

Date of Decision : 14-03-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 151

Citation : AIR 1977 Kar 160 : (1977) ILR (Kar) 678 : (1977) 1 KarLJ 301

Hon'ble Judges : M.S. Nesargi, J

Bench : Single Bench

Advocate : C.R. Patil, for S.L. Benadikar, for the Appellant;

Judgement

1. In this petition filed under S. 50 of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the "Act"), the petitioner has challenged the order dated 8-1-1975 passed on I. A. No. I in H. R. C. No. 129/74 by the II Additional Munsiff, Belgaum.

2. I. A. No. I in H. R. C. No. 129/74 was filed by the respondents, who are admittedly the landlords of the schedule premises. The petitioner is admittedly the tenant of the schedule Premises. By I. A. No. I which the respondents purported to file under S. 10 read with S. 151 of the Civil P. C., the respondents prayed that the enquiry in H. R. C. No. 129/74 should be staved till O. S. No. 34/74, which admittedly, was previously instituted, by the petitioner-tenant, was decided. The learned II Additional Munsiff has directed stay of the enquiry in H. R. C. No. 129/74.

3. The Belgaum Municipality issued a notice to the petitioner-tenant, and the respondents-landlords to demolish the Schedule premises on the ground that the same had become dilapidated, and so was dangerous to the public. The petitioner tenant filed O. S. No. 34/74 against the respondents-landlords and the Municipality praying for injunction on the ground that the schedule premises was not in a dilapidated condition or in a dangerous condition as contended by them. The Munsiff, on the interlocutory application filed by the petitioner, ordered, that

status quo should be maintained. Thereafter, the petitioner filed H. R. C. No. 129/74 as against the landlords only under S. 44 of the Act. In H. R. C. No. 129/74, the petitioner has made out a case that he is a tenant of the schedule premises on a monthly rent of Rs. 50/- and the respondents themselves, being influential people in Belgaum, had made the Municipality to issue a notice which is challenged in O. S. No. 34/74 and that the respondents themselves tried to demolish the schedule premises but he obstructed them and, gave a complaint to the police. While attempting to demolish the building, the respondents have removed the tiles and that has caused heavy leakage. Therefore, the petitioner issued a notice to the respondents calling upon them to effect necessary repairs but the respondents did not care to do so. Hence, he has filed H. R. C. No. 129/74 praying that the court, by exercising its power under S. 44 of the Act, should direct the respondents to attend to the necessary repairs.

4. The learned II Additional Munsiff, has in the course of his order correctly narrated the principles underlying under S. 10 of the Civil P. C. But, ultimately he has held that if enquiry in H. R. C. No. 12,9/74 is permitted to proceed, there is every likelihood of an order being passed contrary to the order passed by the Munsiff on the interlocutory application in O. S. No. 34/74 to the effect that status quo should be maintained, and as such it was, in the interests of justice, necessary to stay the further enquiry in H. R. C. No. 129/74.

5. Shri. C. R. Patil, learned counsel for the petitioner, urged that H. R. C. No. 129/74 is not a suit and hence S. 10 is not applicable. He nextly contended that even if S. 10 is held to be applicable, the ingredients of S. 10 would not be satisfied in view of the fact that the relief claimed in H. R. C. No. 129/74 cannot at all be granted in O. S. No. 34/74 and that has been laid down by this Court in (1972) 1 Mys LJ 576, (Digambar Narayan v. Firm Gadmal Motijo).

6. Shri. C. R. Patil, sought support from the order passed by this Court in C. R. P. No. 1118 of 1973 disposed of on 13-8-1973 and C. R. P. No.. 2413 of 1973 disposed of on 7-11-1974 (Kant).

7. In C. R. P. No. 1118 of 1973, the proceedings that were concerned were O. S. No. 176/69 and tenancy appeals No. 60/63-64 and 30/64-65. O. S. No. 176/69 was a suit for declaration while the two tenancy appeals were concerned with recovery of rents. Stay of further trial in O. S. No. 176/69 was sought and the Munsiff rejected the prayer on the ground that S. 10, C. P. C. was not applicable. This court held that the view taken by the Munsiff was correct.

8. In C. R. P. No. 2413 of 1973 (Kant), the proceedings concerned were H. R. C. No. 325/72 and F. R. C. No. 15/659-70. H. R. C. No. 325/72 was before the Munsiff while F. R. C. No. 15/69-70 was before the House Rent Controller. Stay of further proceedings in H. R. C. No. 325/72 was sought and the Munsiff did not grant the stay order. This court held that the Munsiff was right in his view.

9. It has to be stated that in both the decisions referred to above, the question whether the H. R. C. proceedings or the F. R. C. proceedings or the tenancy

appeals fall within the ambit of S. 10 of the Civil P. C. has not been gone into and no reasoning concerning that aspect is found.

10. If the question whether the provisions of S. 10 of the Civil P. C. are applicable to the proceedings under the Act before the Munsiff has to be gone into, R. 35 of the Karnataka Rent Control Rules. 1961 is to be borne in mind. It reads as follows:

"In deciding any question relating to procedure not specifically provided for by these Rules, the Court shall as far as possible be guided by the provisions contained in the Civil P. C., 1908."

11. In my opinion, it is not necessary to go into this question in this case. I will proceed with the assumption that S. 10 and S. 151 of the Civil P. C., would be applicable to the proceeding under the Act.

12. The principles underlying S. 10 of the Civil P. C., may be narrated as follows:

(i) The matter in issue in the second suit must also be directly and substantially in issue in the prior suit;

(ii) The prior suit must be pending in the same court or in any court in India having jurisdiction to grant the relief claimed; and

(iii) Where the previously instituted suit is pending in any court in India, such court is of competent jurisdiction to grant the relief claimed in the subsequent suit.

13. The relief claimed in H. R. C. No. 129/74 is under S. 44 of the Act while the relief claimed in O. S. No. 34/74 is permanent injunction. The two reliefs are quite different. In O. S. No. 34/74, the relief claimed by the petitioner under S. 44 of the Act cannot be granted. This view is supported by the decision in *Digambar Narayan v. Firm Gadmal Motijo* 1972 (1) Mys LJ 576. It is laid down therein that a suit against the landlord under S. 44 of the Act for a direction to carry out reasonable repairs to the building at his expense within a reasonable time or in the alternative for permission to get the repairs carried out and have the costs of such recovered from the landlord is not maintainable, as an application under S. 44 of the Act only will have to be filed. Therefore, it is plain that the third condition necessary to satisfy the ingredients of S. 10, C. P. C. is absent in the case on hand. That shows that S. 10 cannot be made use of on the facts and circumstances of the case .

14. Now it is to be considered whether S. 151 of the Civil P. C. can be made use of by the landlords. When the specific provision as available in S. 10 of the Civil P. C. cannot be made use of, it follows that some exceptional circumstances as observed in C. R. P. No. 1118 of 1973 (Mys) and C. R. P. No. 2413 of 1973 (Kant) should be present to call for the application of the provisions in S. 151 of the Civil P. C. No such exceptional circumstances have been made out by the respondents landlords. Hence, the view taken by the learned II Additional

Munsiff, is not sustainable and this petition is entitled to succeed.

15. In the result, this petition is allowed and the order dated 8-1-1975 passed on I. A. No. I in H. R. C. No. 129/74 by the II Additional Munsiff, Belgaum, is set aside. No order as to costs.

16. Petition allowed.