

(2000) 03 KAR CK 0021

In the Karnataka High Court

Case No : House Rent Revision Petition No. 372 of 1993

Ganapati Marthu Pai

APPELLANT

Vs

The Chairman, Consumers Co-operative Limited

RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 146

Karnataka Rent Control Act, 1961 — Section 21 (1) (a), 21 (1) (h), 50

Citation : (2000) ILR (Kar) 2040 : (2000) 4 KarLJ 333 : (2000) 3 KCCR 1736

Hon'ble Judges : H. Rangavittalachar, J

Bench : Single Bench

Advocate : Sri G.S. Visweswarafor Sri Rajanikanth Kulkarni and Sri Vishnu D. Bhat, for the Appellant; Sri Vinod Prasad, for the Respondent

Judgement

1. Shop No. 74 situate at Kotitheerthaward in Gokarna Town Panchayat, Karwar, Uttara Kannada District, is in occupation of the respondent herein as a tenant (hereinafter referred to as "tenant"), on a monthly rent of Rs. 23/- who has been using the same for the business of the "Consumers Co-operative Limited". This shop earlier belonging to the Hindu Joint Family of Ganapati Marthu Pai, petitioner herein (hereinafter called as the "landlord" for brevity). The said Ganapati Marthu Pai in the capacity of the Manager of Hindu Joint Family, he being the eldest male member had filed an eviction petition on the file of the learned Munsiff, Kumta in HRC No. 6 of 1979 against the respondent-tenant, seeking the latter's eviction on two grounds.-

(i) That he had not paid the monthly rents from 1-6-1978 in spite of notice of demand as required by Section 21(1)(a) of the Karnataka Rent Control Act (for short, "the Act") within two months from the date of receipt of the notice.

(ii) That the premises is required for his personal use and occupation, u/s 21(1) (h) of the Act.

2. This application was contested by the tenant.

3. The learned Munsiff allowed the eviction petition u/s 21(1)(a) of the Act while rejected the same u/s 21(1)(h).

4. Aggrieved by the said order a rent revision was filed u/s 50 of the Act by the tenant before the learned District Judge, Karwar, who allowed the tenant's revision and consequently dismissed the eviction petition. This order is under challenge.

5. Facts necessary and relevant for the disposal of this revision petition are as under:-

It is not in dispute that the landlord issued a notice u/s 21(1)(a), dated 24-7-1979 calling upon the tenant to pay the arrears of rent he was due from 1-6-1978 vide Exhibit P. 5. The eviction petition came to be filed on 5-10-1979 on the ground that even on the date of filing of the eviction petition, tenant had not paid the rents. It is also not in dispute that within two months from the date of receipt of the notice the tenant did not pay any rents.

6. However, certain events happened which influenced the decision of the Court below namely that when the eviction petition filed by the landlord was pending, a partition took place among the members of the landlord's family. The premises in question fell to the share of the landlord's brother Sridhar M. Pai who filed an application LA. No. I to come on record as a second petitioner and prosecute the revision petition along with the landlord on the ground that after partition the premises is required for his use. This application came to be rejected by the learned Trial Judge by his order dated 8-1-1985 on the ground that the eviction petition which was filed originally for the occupation of the landlord but now the brother wants to plead a new case altogether that it is required for his personal use. Such a course cannot be permitted. After the dismissal of LA. No. I, Sridhar M. Pai did not seem to have pursued the matter further.

7. However, the trial of the eviction petition continued with the landlord as the petitioner. Learned Munsiff as stated allowed the eviction petition u/s 21(1)(a) overruling the objection of the tenant "that after partition landlord had no right to prosecute the petition as he ceases to be the landlord" on the ground that in view of the provisions of Section 21(1)(a) the liability of the tenant to vacate in no way got altered because of this subsequent event and therefore ordered eviction.

8. When the rent revision was pending, on 19-3-1986 the brother to whom the schedule property was allotted Sridhar M. Pai died without leaving any wife or children. His mother Laxmi Bai inherited his share as class one heir under the Hindu Succession Act.

9. The learned District Judge on the basis of this subsequent event of partition allowed the revision petition solely on the ground that the landlord herein ceased to be the "landlord" within the meaning of Section 21(1)(a) of the Act. Therefore, the very eviction petition was incompetent and accordingly, allowed

the revision petition.

10. Subsequent to the filing of this revision petition the said Laxmi Bai, the mother also died on 15-2-1992 leaving behind the present landlord, her son, and other children as her legal representatives. An application has been filed by the present landlord and the other legal representatives of Laxmi Bai dated 19-9-1998 to come on record and prosecute the revision petition. No objections have been filed to this application by the respondent-tenant. Accordingly LA. is allowed.

11. Thus the present landlord who had sufficient interest at the inception to maintain the eviction petition though had lost the same during the course of time has again regained (as co-owner) due to the chance events.

12. Sri G.S. Visweswara, learned Counsel for the petitioner submitted that when the landlord had all the competence to maintain the eviction petition at the time of filing the same; though during the course of proceedings he might have lost the interest, the eviction order obtained by him was valid and enured to the benefit of his brother, later his mother and now himself along with other co-owners by virtue of the principles of Section 146 of the Code of Civil Procedure. In support of the said contention learned Counsel relied on the decisions of the Supreme Court in Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another, , and Jugalkishore Saraf Vs. Raw Cotton Co. Ltd., . Learned District Judge overlooking the same has passed the impugned order therefore the same is liable to be set aside.

13. In answer to this Sri Vinod Prasad, learned Counsel appearing for the respondent-tenant submitted that firstly that when the petitioner herein lost the property to his brother at a partition and the attempt made by the brother to come on record being rejected, at the time of passing of the decree by the Trial Court, he cannot be considered to be the landlord within the meaning of the Karnataka Rent Control Act and therefore the view of the learned District Judge cannot be faulted. In support of the said contention the learned Counsel relied on the decision of the Supreme Court in M.M. Quasim Vs. Manohar Lal Sharma and others, .

14. Alternatively, he submitted that the learned Munsiff overlooked the explanation offered for "non-payment of the rents" with two months viz., unless a resolution was passed by the management of the society the Chairman or the Secretary could not have independently paid the rents and immediately after the resolution was passed, rents were paid though not within two months from the date of receipt of the notice vide Exhibit P. 5. Therefore, the respondent-tenant had "sufficient cause for non-payment".

15. Before adverting to the rival contentions, it is necessary to state that though the Karnataka Rent Control Act is a beneficial piece of legislation inasmuch as one of the main purpose of the Act is to protect the tenant from being evicted at the whims of the landlord, but the tenants who are getting this statutory

protection (which was not available under General Law), are also required to strictly perform what they are obliged to as tenants namely paying the rents.

16. Section 21 of the Karnataka Rent Control Act provides 16 different situations under which a landlord can seek eviction of the tenant. An analysis of these 16 different provisions that is from 21(1)(a) to 21(1)(p) of the Act shows while provisions u/s 21(1)(i), (j), (k), (l) and (m) speaks of the grounds from the landlord's point of view, while the other sub-clause of Section 21(a), (b), (c), (d), (f) and (o) of the Act speak of the conduct or obligation of the tenant both positive as well as negative which displayed or not performed makes him liable to vacate. Section 21(1)(a) is one such clause which being relevant extracted herein for ready reference:

"Section 21. Protection of tenants against eviction.-

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for recovery of possession of any premises shall be made by any Court or other authority in favour of the landlord against the tenant:

Provided that the Court may on an application made to it, make an order for the recovery of possession of a premises on one or more of the following grounds only namely:

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of payment for the arrears of rent has been served on him by the landlord by tender or delivery either personally to the tenant or to a member or servant of his family at his residence (or if such tender or delivery is not practicable) by affixture to a conspicuous part of the premises".

17. By a close reading of Section 21(1)(a) it is manifest that when the tenant does not pay the rents within two months from the date of receipt of the notice and in the absence of his showing an explanation for nonpayment on the expiry of the 2 months he incurs the liability to be evicted. In other words the right in favour of landlord accrues on the expiry of two months to have the tenant evicted. The Supreme Court in *Bhaiya Punjalal Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad*, , has stated:

"The tenants paying the arrears of rent after the institution of the suit therefore does not affect his liability to eviction and the Court's power to pass a decree for eviction. It is true that the expression used in clause (a) of sub-section (3) is the Court may pass a decree for eviction, in any such suit for recovery of possession, but this does not mean as contended for the appellant, that the Court has discretion to pass or not to pass a decree for eviction in case the other conditions mentioned in that clause are satisfied. The landlord became entitled to recover possession when the tenant failed to pay rent and this right in him is not taken away by any other provision in the Act. The Court is therefore bound in law to pass the decree when the requirements of sub-section (2) of Section 12 are

satisfied. This is also clear from a comparison of the language used in clause (a) with the language used in clause (b) of sub-section (3) which deals with a suit for eviction which does not come within clause (a) and provides that no decree for eviction shall be passed in such a suit if on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent then due and thereafter continues to pay or tender in Court regularly such rent till the suit is finally decided and also pays costs of the suit as directed by the Court. It is clear that where the legislature intended to give some benefit to the tenant on account of the payment of the arrears during the pendency of the suit, it made a specific provision. In the circumstances, we are of opinion that the Court has no discretion and has to pass a decree for eviction if the other conditions of sub-section (2) of Section 12 of the Act are satisfied".

(emphasis supplied)

Though the decision was rendered under the Bombay Hotel and Lodging House Rates Act, the principles enunciated therein are applicable while dealing with cases u/s 21(1)(a) of the Act.

18. In this case it is not in dispute that the tenant did not pay the demanded arrears of rent within two months, therefore incurred the liability to be evicted. But then the contention taken by the tenant, that "eviction order passed by the learned Munsiff itself was bad in law on account of subsequent partition has been answered in his favour by the Rent Revision Court, which is also the submission of tenant's Counsel. Besides, the tenant also has contended that he had sufficient cause for non-payment.

19. Therefore, the points arise for consideration before this Court are:

(i) Whether the eviction order passed was bad in law and not enforceable on account of partition.

(ii) Whether the tenant had sufficient cause for non-payment of rent.

Point No. 1:

20. In this case it is not in dispute, that the demand notice to pay the arrears of rent was issued by Ganapati Marthu Pai as the "Manager" of the Hindu Joint Family and the eviction petition was filed and prosecuted by him till partition in the said capacity and later he continued the proceedings till it was culminated in the eviction order

21. It is well-accepted principle of Hindu Law that a Manager is the representative of the joint or undivided family as a whole, (though in the strict sense he is not an Agent or Trustee) and his position is that of "Suigeneris" he can alone sue or be sued representing the family and the result of the suit will enure for the benefit of or bind the other members of the family as the case may be, notwithstanding that they themselves were not parties to the suit. -- AIR

1927 56 (Privy Council) , Bujhawan Kuer and Others Vs. Hanuman Rai and Others, , Jaigobind Misir and Others Vs. Nagesar Prasad and Others, , and the Manager when he sues or sued acts in the representative capacity in respect of joint family property: See "Mulla's Hindu Law, 15 Edition, page 340. This "Representative Character" of the Manager in suits or proceedings continues in the ordinary course till the end of litigation, and the fruits viz., the benefit or liability is enjoyed or suffered by every member of the family. But does the representative character ceases after a "partition" effected between the members of the family during the pendency of the suit, and will the proceedings or the suit or the decree become bad or non-executable if the divided member to whose share the litigated property is allotted does not continue the suit by getting himself substituted, and the proceedings are continued by the Manager; and in my view "partition" will not take away the "Representative Character" of the Manager to continue the proceedings, unless, the divided member, opposes for such a continuation. This view of mine is fully supported by the Full Bench decision of the Madras High Court in Vadlamanati Venkatanarayana Rao v Gottumukkule Venkata Somaraju. Facts in the said case are that "A decree obtained by plaintiff for possession and later for mesne profits against the father of a Hindu Joint Family, was sought to be executed against the son after the father's death and partition on the ground that the litigated property was allotted to son's share. The son raised a defence that since partition was effected during the pendency of the suit, the father lost the status of kartha, consequently his "Representative Character" also disappeared, hence a decree passed against the father without he being a party was not binding on him". The question that arose in the said case was "Whether partition made any difference to the "Theory of Representation", if so, under what circumstances", it was answered that it did not, unless opposed by the divided member; by the three learned Judges in concurring but different judgments. Learned Judge Sri Venkatasubba Rao, J., after narrating the facts has stated: "The question arises, does the fact of the partition make any difference? I think the theory of representation must imply that the respondent, though not "eo nomine" on the record, should be treated as though he himself was a party to the suit, if this be so, it follows in my opinion, that unless he has done something which has had the effect of "removing him from record he must be treated as continuing to be a party till the date of decree".

(emphasis supplied)

22. Again after referring to Mayne's Hindu Law, 9th Edition, Section 333, it is stated by the learned Judge:

"Lastly, the question remains, does the fact that subsequent to the suit there was a partition, make any difference? The reason for holding that the members not joined should be held liable is, that they are substantially parties to the suit through the Manager, in other words, they are sufficiently represented, though not eo nomine parties on the record. It follows from this, that the decree can be

executed not only against the parties whose names appear but also against those who must be deemed to be constructive parties. In this view it is immaterial whether the family continues to remain joint or became divided. As Mayne observes:

"All the members of the family, and therefore all their property, divided or undivided, will be liable for debts which have been contracted on behalf of the family by one who was authorised to contract them. (Mayne's Hindu Law, 9th Edition, Section 333)".

In this case the partition was, as already stated, entered into prior to the decree (though long after the commencement of the suit) but that circumstance, as I have held above, makes no difference".

23. Venkataramana Rao, J., another learned Judge and the member of Full Bench, has more elaborately stated the principle in the passage quoted as under:

"The principle of Hindu Law is that members who are united at the time a joint family liability is incurred, are not absolved from their liability by the fact that they became subsequently divided: vide *Chelamayya v Varadayya*, at pp. 170 and 171. So far as a creditor is concerned, he is entitled to have recourse to every item of the joint family property so long as it is in the hands of the persons who are under the law liable for his debt. When they must be held to be parties to the suit, it is immaterial what the character of the property in their hands is, whether it is still undivided property or has become separate property by division. In this case, at the time of the acquisition, at the time of the first partition, at the date of the institution of the suit and at the date of the institution of the appeal defendant 5 was sued as a representative of his family and he effectively represented the family and thus the present respondent. The question is: did that representation cease by virtue of the partition before the date of the decree in the High Court? The suit having been properly constituted, any severance of status between several members of the family would not divest the representative character of the Manager therein till the other members choose to disaffirm it; he was entitled to carry on the litigation for and on behalf of the respondent and can be held accountable in respect thereof. The estate of a person dying during the pendency of a suit was held to be fully represented by one of his several heirs brought on the record in his place but only for that purpose, much more so in respect of a transaction concerning the joint family, the Manager who is empowered by law to represent the other members who are interested therein must be deemed to continue to represent them till the transaction is completed as until then the joint interest in the transaction cannot be said to have ceased. But in this case it seems to me it would not lie in the mouth of the present respondent to deny the representative character of his father. At the date of the partition he must be deemed to have been quite aware of the pending litigation and when the suit property was assigned to the share of the father he must be deemed to have also been clothed with the necessary power to defend the appeal in regard thereto. If the present respondent thought

that his father should not be allowed to represent him, it was his duty to have come on the record. Having failed to do so, he is precluded from now asserting that defendant 5 no longer represented him. Therefore, the property in the hands of the present respondent is liable to be taken in execution of the decree for mesne profits passed in this case".

24. Following Venkatanarayana Rao's case, supra, the Kerala High Court in Ittiavira Thomas Vs. Sankaranarayanan Kesavan Nampori of Manakkattu and Another, , has held that "Where a Karnavan files a suit every member of the family was therefore constructively though not eo nomine a party to the suit, the representative character occupied by the Karnavan is not affected by the severance of status pending the suit unless the other members choose to disaffirm it".

(emphasis supplied)

25. In this case when the landlord filed the eviction petition in the capacity of Manager, it was a petition in the "representative capacity", even though a partition was effected it did not affect the prosecution of the petition in such capacity, as the brother Sridhar Pai herein did not do any act to disaffirm it, all that he did was to file an application for impleading as additional petitioner, only to contend, the premises is required for his use, but never opposed for prosecuting of the petition u/s 21(1)(a) by the "landlord" not merely that, he gave evidence in support of the petition. He was examined as P.W. 1 which evidence shows that he affirmed the action of the landlord to represent him.

26. Insofar as reliance placed by Sri G.S. Visweswara, learned Counsel for the landlord in Jugal Kishore's case, supra, no doubt the Hon'ble Supreme Court expounded the principle that a "plaintiff who transfers his interest in the subject-matter of suit in favour of a third party, but continues with the litigation and obtains a decree, the transferee will be entitled to the fruits of the decree, or will be liable under the decree, even though he does not come on record or made a party to litigation on the principle that the plaintiff becomes a benamidar of the transferee" on the construction of Section 146 of the Code of Civil Procedure. In my view, in the light of my discussions stated above and holding that the "Theory of Representation" has application to the facts of this case, the question whether the principles of Section 146 of the CPC has application to "Rent Control Proceedings", is unnecessary to decide in this case and the same is left open.

27. Sri Vinod Prasad, however submitted on the basis on the decision of the Supreme Court in MM. Quasim's case, supra, "that in order to obtain an eviction order, the eviction petitioner must be the owner of the property". Learned Counsel read to me extensively the said decision to emphasize his point. In M.M. Quasim's case, supra, two brothers Manoharlal Sharma, Motilal Sharma and his uncle Kishorilal Sharma filed an eviction petition against the tenant M.M. Quasim seeking the shop in his occupation for opening a clinic, and also on the ground that the tenant defaulted in paying the rents, under Bihar Buildings (Lease, Rent

and Eviction) Control Act, 1947. Trial Court had ordered eviction which was appealed before the Additional Subordinate Judge. During hearing of the appeal tenant filed an application under Order 41, Rule 27 stating that the suit properties were allotted to the share of one Pyarelal Vishwakarma in a partition suit filed by the uncle Kishorilal, therefore the personal need to occupy ceased, which contention was rejected by both the Appellate Court and High Court, on the matter being taken up before the Supreme Court, it was held after quoting Section 11(1)(c) of the Bihar Rent Act which provides for eviction when the landlord requires for his personal use that the meaning of the word "landlord" in the context used u/s 11 gets a restricted meaning then what the definition provides for. u/s 11(1)(c) of the Act the eviction petitioner must have a "Right to occupy in his own Right". After referring to the definition of the word "landlord" which is in the same terms as under Karnataka Act and also the explanation to Section 11(1)(c) to the following effect:

Explanation.--In this clause landlord shall not include an agent referred to in clause (d) of Section 2, the Court held:

"Therefore the explanation to clause (c) which cuts down the wide amplitude of the expression "Landlord" would unmistakably show that for the purpose of clause (c) such landlord who in the sense in which the word "owner" is understood can claim as of right to the exclusion of every one, to occupy the house, would be entitled to evict the tenant for his own occupation". Ultimately the matter was remanded to the file of the Appellate Court to enquire about the effect of partition on the proceedings. As the facts in this case itself suggest, the eviction petition was not filed by the "Manager" of the Hindu Joint Family, and the "Theory of Representation" was not the subject-matter of consideration. Secondly, whether the same restricted meaning of "landlord" excluding all others than the "owners" found in definition clause for consideration of eviction of the tenant when he defaults to pay rent u/s 21(1)(a) of the Karnataka Act was also not the subject-matter. Quasim's case, supra, is distinguishable on facts, particularly, when eviction is sought u/s 21(1)(a) of the Act under the Karnataka Rent Control Act, the expression "landlord" takes the meaning to suit the context of the different clauses. When eviction is sought on the ground of "personal requirement" u/s 21(1)(h), the expression "landlord" becomes personalised, inasmuch as, the requirement is relatable to the "personal need" but the same word gets a wider meaning when used in the context of seeking eviction on the ground that tenant has defaulted in paying the rents, a Rent Collector, a trustee etc., are also included. There is nothing in the definition of the word "landlord" or under the scheme of the Rent Act to exclude the application of the Doctrine of Representation of Manager of the Hindu Joint Family to continue the proceedings, even after partition; and in my view he will be the landlord for purposes of eviction u/s 21(1)(a) of the Act, and the benefit of eviction order obtained by him is available to the divided member also".

28. Hence Point No. 1 is answered as follows:

29. The eviction order passed by the learned Munsiff was valid in law and enforceable.

Point No. 2:

30. The submission of Vinod Prasad that the explanation offered for non-payment of rent should have been held as sufficient cause and the tenant should have been exonerated from the liability u/s 21(1)(a) of the Act.

31. The cause shown is that the Secretary could not have paid the rents until the Board passed a resolution therefore, rents were not paid cannot be held to be a sufficient cause, when the society took the premises on rent, it must have been aware that its duty is to pay the monthly rents regularly and it cannot tell the landlord that it will only pay rents at such intervals, when the Board Members decide and pass resolutions to the said effect. Therefore, no exception can be taken to the finding of learned Munsiff that the tenant had not the sufficient cause in not paying the rents within two months as required by law.

32. Point No. 2 is answered, holding that the explanation offered cannot be held to be sufficient in the eye of law and thus the learned Munsiff had not committed any jurisdictional error in holding that the tenant had not shown any sufficient cause for default.

33. For the reasons stated above the revision petition is allowed, the order of the learned District Judge passed in Rent Revision Petition No. 10 of 1985 is set aside, while that of the learned Munsiff is restored Consequently, the eviction petition filed u/s 21(1)(a) is allowed.

34. Tenant is given one and a half years time to vacate.