

(2015) 02 KAR CK 0379
In the Karnataka High Court
Case No : C.R.P. No. 415/2014 (S.C.)

H. Nabhiraja

APPELLANT

Vs

Sathya Prakash

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2015) 02 KAR CK 0379

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : K. Chandranath Ariga, for the Appellant; N.J. Ramesh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—Heard the learned counsel appearing for the parties and perused the final order passed in case bearing No. S.C./1846/2012 dated 03.09.2014 passed by the learned XVI Additional Small Causes Judge, Court of Small Causes, Bangalore.

2. Petitioner herein is the defendant in the said suit. The respondent herein is the plaintiff in the said suit.

3. Parties are referred to in the same rank as they are referred to by the trial Court.

4. Plaintiff is the absolute owner of the suit schedule property measuring 9,450 Sq. Ft. situated at Hosur Road, Aduhogi, Bangalore. Defendant has established a petrol bunk having taken the suit schedule property on lease from the plaintiff on 24.11.1987. Initially, the lease was for a period of five years and subsequently, the lease was extended for a period of 25 years commencing from 01.12.1987 to 01.12.2012. According to the plaintiff, the lease period came to an end on 01.12.2012. Thereafter, the plaintiff chose to issue a reminder to handover the suit property before the expiry of time as fixed in the registered lease deed. In

spite of receipt of the said notice/reminder, the defendant did not comply with the same and hence, the plaintiff was forced to file a suit before the Small Causes Court seeking to evict the defendant from the suit schedule property.

5. Defendant has chosen to file detailed objections admitting the existence of lease. According to the defendant, the lease was a period of 25 years from 01.12.1992 and that the term would expire only on 30.11.2017 and not on 01.12.2012 as averred by the plaintiff. Therefore, he wanted the suit to be dismissed.

6. Plaintiff is examined as PW-1 and has got marked 8 Exhibits. Defendant is examined as DW-1 and two witnesses have been examined on his behalf. The learned Judge of Small Causes has framed following three points for consideration as found in Paragraph No. 6 of the impugned order.

"1. Whether the plaintiff has proved that the tenancy of the defendant is duly terminated?

2. Whether the plaintiff is entitled for the relief as prayed for?

3. What order or decree?"

Ultimately he has answered issue No. 1 in the "Affirmative" and issue No. 2 partly in "Affirmative". The suit has been decreed granting three months time to vacate and handover the suit schedule premises and directing the defendant to pay a sum of Rs. 5,500/- per month as damages from the date of the suit till the date of delivery of possession of the suit schedule property. It is this judgment, which is called in question in this petition on various grounds as set out in the petition.

7. Learned counsel for the plaintiff has vehemently argued that the document relied on by the defendant is inadmissible in evidence and therefore, it has not been marked. It is further argued that time of 25 years has expired on 01.12.2012 pursuant to the time fixed in the registered lease agreement dated 05.12.1988 which is marked as Ex-P8.

8. On going though the oral and documentary evidence, the unregistered lease deed relied upon by the defendant which is dated 11.10.1988 has not at all been marked for two reasons:-

i) For want of registration and

ii) Non payment of requisite Stamp Duty.

Even if the defendant were to pay the deficit Stamp Duty, the same cannot be considered for want of registration and therefore, the trial Court has rightly ignored the said document.

9. The plaintiff has got issued a reminder calling upon the defendant to vacate and hand over the vacant possession of the suit schedule property prior to 01.12.2012. The registered lease deed was modified on 05.12.1988 extending

the period from 5 years to 25 years with effect from 01.12.1987. The notice is dated 28.11.2012. The suit has been filed on 12.12.2012 and the defendant received the notice on 28.11.2012.

10. What is argued before this Court by the learned counsel for the petitioner is that the suit is not maintainable in the light of 15 days time being not given before termination. The said letter got issued by the plaintiff cannot be construed as a notice and at the best, it could be considered as a reminder in terms of contents of registered lease agreement. Even otherwise, the defendant cannot hold over to the suit schedule property after the expiry of the term fixed in the agreement of lease. The tenancy got terminated by efflux time and this aspect of the matter has been dealt with at length by the Hon'ble Apex Court in the case of Pooran Chand Vs. Motilal and Others, . It is held in the said decision that Section 106 of Transfer of Property Act does not arise when the tenancy gets terminated by efflux of time as found in the agreement of lease and therefore, the contention of the learned counsel for the petitioner cannot be accepted.

11. Viewed from any angle, the learned Judge has considered the entire oral and documentary evidence in right perspective to hold that the suit is to be decreed. The only question that arises for consideration before this Court is about the reasonable time to be granted to the petitioner/defendant to vacate and handover the suit schedule property. Three months time has been granted by the trial Court while decreeing the suit on 03.09.2014.

12. Admittedly, the said suit schedule property has been used for establishment of petrol bunk and it has been run for the past 25 years. Even if the defendant were to relocate the same, he needs reasonable time to obtain fresh license in order to relocate the same to the place which would be accepted by the Indian Oil Corporation. The diesel tanks have been installed inside the ground of the petrol bunk and that too, after complying with the safety norms prescribed by the Indian Oil Corporation. Even otherwise, the defendant has earned a goodwill by running the petrol bunk for a quarter century.

13. Taking all these aspects into consideration, reasonable time is to be granted to the defendant to vacate and hand over vacant possession of the suit schedule property subject to payment of damages to be paid from today.

14. Accordingly, the following:

ORDER

i) Appeal is dismissed.

ii) However time is granted till 31.03.2016 to vacate and handover vacant possession of the suit schedule property subject to payment of Rs. 15,000/- (Rupees Fifteen Thousand Only) as damages commencing from 01.03.2015 till the possession is handed over to the plaintiff.

iii) The defendant shall file an affidavit undertaking to comply with the conditions

imposed by this Court today and shall also undertake that no extension of time will be sought.

Parties to bear their own costs.