

(2013) 08 KAR CK 0122

In the Karnataka High Court

Case No : Regular First Appeal No. 995 of 2013

Hindustan Petroleum Corporation Limited

APPELLANT

Vs

Capt. H.R. Prasad

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2013) 08 KAR CK 0122

Hon'ble Judges : B.S. Indrakala, J

Bench : Single Bench

Advocate : Narayan M.S, for the Appellant; B.R. Vishwanath, Advocate for C/R, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Indrakala, J.—Though the matter is listed for admission, with the consent of the Counsel for both the appellant and the respondent, the case is heard on merits. For the sake of convenience, the parties herein are referred to by their respective rank as arrayed before the Court below viz., appellant as defendant and respondent as plaintiff.

2. The plaintiff/respondent filed the instant suit seeking a judgment and decree directing the defendant/appellant to quit and deliver vacant possession of the schedule property mentioned in the schedule to the plaint and also for awarding mesne profits and damages.

3. It is basically contended by the plaintiff that the schedule property was acquired by the plaintiff under the gift deed dated 18.3.2000 executed by Smt. Narasamma his mother. Further it is contended that the original owner Smt. Narasamma issued a termination notice on 26.1.1990 to the defendant and as he failed to comply with the said notice seeking vacating of the premises by the defendant, she was compelled to file HRC No. 762/1990, which was dismissed for want of jurisdiction. However, subsequently HRRP No. 1426/1997 preferred

against the said order was dismissed as withdrawn reserving liberty to her to proceed afresh and the learned Counsel for the plaintiff/respondent submits that the said proceeding was so dismissed only on the point of jurisdiction. The said Narasamma died in the month of April, 2004.

4. It is further contended by the plaintiff that subsequently before instituting the present suit, a valid termination notice was issued on 5.5.2009 and as the rent which was being paid by the defendant was only nominal, a sum of Rs. 500/- which was not comparable with the present rate of rent, the plaintiff also sought awarding of damages from 1.7.2006.

5. The defendant in its written statement though admitted the ownership of Narasamma, denied the other allegations with regard to unauthorized occupation on service of notice of termination etc., and it is specifically pleaded that the defendant is not liable to pay future mesne profits till the date of vacating the premises and the suit for ejectment is not maintainable etc., and sought dismissal of the suit.

6. On the basis of the said pleadings, the following issues were framed by the trial court:

1. Whether the Plaintiff proves that he is the owner of the suit schedule property?
2. Whether the plaintiff proves that the defendant is in possession of the suit schedule property as tenant?
3. Whether the plaintiff proves that he has terminated the tenancy rights of the defendants validly and legally as pleaded?
4. Whether plaintiffs are entitled for vacant possession of the suit schedule property and damages as claimed?
5. What Order or relief?

7. In order to prove his case, the plaintiff chose to examine himself as P.W. 1 and on behalf of the defendant, the representative of the defendant by name Rajesh, who is the Area Sales Manager, is examined as D.W. 1 and Exhibits P. 1 to P. 3 and D. 1 are got marked by the respective parties.

8. On appreciation of the said evidence so let in by the parties, the trial Court deemed it fit to decree the suit with cost directing the defendant to quit and deliver vacant possession of the suit schedule property within 6 months from the date of decree and also awarded damages of Rs. 15,000/- per month from 1.7.2006 till the date of suit.

9. Aggrieved by the said judgment and decree, the defendant has preferred the above appeal inter alia contending amongst other grounds that the notice of termination dated 5.5.2009 was defective and the same was not acted upon or given effect to; that the respondent having accepted the receipt of rents subsequently, it has to be construed that the plaintiff has waived his right; there

is no termination of tenancy as required u/s 106 of the Transfer of Property Act; that granting of damages at the rate of Rs. 15,000/- per month is without any basis or evidence; that no enquiry as contemplated under Order 20 Rule 12 of CPC is held and the evidence let in by the parties are not properly appreciated and has sought allowing of the appeal.

10. Heard the arguments of the learned Counsel for the appellant and respondent.

11. In view of the submissions made, the points that arise for consideration are:

i) Whether the judgment and decree dated 13.3.2013 passed in O.S. No. 5119/2009 on the file of the XIV Additional City Civil Judge (CCH-28), Bangalore is liable to be set aside?

ii) What order?

12. Admittedly the appellant/defendant is in occupation of the schedule premises as a tenant originally under the lease deed dated 13.1.1970 under the, the then owner, who was none other than the grand mother of the plaintiff. Likewise the said lease, which was for a period of 20 years, was renewed for a further period of 20 years and the same expired in the year 2009. On such expiry of the period of tenancy in the year 2009, the tenancy continued on a monthly basis from month to month. No doubt the HRC No. 762/1990 was preferred during the subsistence of such lease deed but nevertheless it was not a bar to seek eviction even during such subsistence of lease/tenancy.

13. Be that as it may. It is seen that the present suit is filed after the expiry of the lease period on the ground that by afflux of time, the tenancy is automatically terminated and the plaintiff is entitled to recover possession of the same. Considering the evidence placed on record, the trial Court deemed it fit to hold that the plaintiff has proved that he is the owner of the suit property and the plaintiff is in possession of the suit schedule property as a tenant by answering issue Nos. 1 and 2 in the affirmative and the same does not call for interference and besides, the said proposition is also not in dispute between the parties.

14. With regard to termination of tenancy, it is observed by the trial Court that legal notice, dated 5.5.2009 was issued by the plaintiff is admitted and further though the plaintiff has accepted the rent subsequent to service of the said notice, the same cannot be called as waiver of his right. Admittedly, after the expiry of the period stipulated under the lease agreement, the tenancy is a monthly one giving rise for re-occurrence of cause of action on the expiry of each month. In the circumstances, it cannot be said neither the plaintiff nor his mother, who was the then owner had agreed for further extension of lease period. Thus the observations made by the trial Court that the notice issued under the Transfer of Property Act is valid and the requirement of Section 106 of the said Act is fully satisfied also cannot be interfered with.

15. With regard to the damages awarded, admittedly the rate of rent is Rs. 500/- p.m. even as of now and the property is situated at Chamarajpet, the busy area where even as per the guidelines, the rate of rent of the property fixed by the Government itself is much more than the amount of Rs. 500/- and in the circumstances, considering the area measuring about nearly 10,475 sq. feet, which is the subject matter of the tenancy, awarding of Rs. 15,000/- as damages per month from 1.7.2006 till the date of suit is also proper. Thus the judgment and decree passed by the trial Court, does not call for any interference and accordingly, point No. (i) is answered in the negative. However, considering the facts and circumstances of the case, even after passing of the decree till the defendant hands over vacant possession of the property, the said damages has directed to be paid by the defendant. Considering the fact that the premises is a commercial premises where petrol bunk is being run, it is also proper to award sufficient time for the appellant/defendant to quit and deliver vacant possession of the same and it is reasonable to grant time till 31.12.2014. Hence the following:

ORDER

- i) The above appeal is dismissed;
- ii) However, further time is granted for the appellant/defendant to quit and deliver vacant possession of the schedule premises on or before 31.12.2014; and
- iii) The appellant/defendant shall continue to pay the damages at the rate of Rs. 15,000/- per month till he vacates and hands over vacant possession of the premises.