

(1982) 10 KAR CK 0009
In the Karnataka High Court
Case No : RSA 553/75

Janab A. Abbubucker and Others

APPELLANT

Vs

Mai De Deus Church and Others

RESPONDENT

Date of Decision : 13-10-1982

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 27

Citation : (1982) 2 KarLJ 598

Hon'ble Judges : G. N. Sabhahit, J

Judgement

1. This appeal by the plaintiffs is directed against the judgment and decree dated 22-1-75 passed by the Prl. Civil Judge, Mangalore S.K. in RA No. 198 of 1971, on his file, confirming, the judgment and decree dated 25-11-71 passed by the Munsiff, Puttur, in O.S. No. 439 of 1968, on his file, dismissing the suit of the plaintiffs.

2. The plaintiffs instituted a, suit for possession of shop numbers 5 and 6 in the newly constructed building of defendant-1. Defendant-1 earlier, instituted a petition for eviction of the present plaintiffs as tenants in the then suit building with a view to demolish and reconstruct the building. That ended in a compromise and in the compromise decree, inter alia, it was specifically stated thus:

"After the construction is ready, as mentioned above, the accomodaation in such building, which shall be offered by the petitioner to the respondents shall not be less than 200 sq. feet and the respondents shall be entitled to take the same on such fair rent as may be fixed by the trial court".

When the present plaintiffs asked for shop numbers 5 and 6 which, according to them, were in the same place as their earlier shops, defendant-1 refused to let out those shops but offered shop number 3 which had, the same dimension of 200 sq/feet or more. The plaintiffs did not accept to occupy the same. Waiting for some, time, as per Clause 5 of the compromise the owner let it to others. Since shop numbers 5 and 6 were not given to the present plaintiffs, the erstwhile

tenants, they instituted the suit before the Munsiff, Puttur, at OS No. 439 of 1968.

3. The landlord resisted the suit on the ground that there was nothing in the compromise menu that stoops, constructed in the same place, as occupied by the plaintiffs earlier, would be let out to them. On the other hand, as quoted, above, the landlord was to offer shops having dimension of not less than 200 sq. feet. Thus, the choice was left entirely to the landlord after construction to offer whatever shop in the building having dimension of not less than 200 sq. feet.

4. The trial Court, appreciating the evidence on record, held that the plaintiffs had no right to claim as per the terms of the compromise, which was in accordance with law, any particular shop. On the other hand they were to accept the shop offered by the landlord having dimension of not less than 200 sq. feet. In that view, the suit of the plaintiffs was dismissed. Aggrieved by the said judgment and decree, the plaintiffs went up in appeal before the Prl. Civil Judge, Mangalore, and the learned Civil Judge, reassessing the evidence on record, agreed with the findings of the learned Munsiff and dismissed the appeal. Aggrieved by the same, the plaintiffs have instituted the above second appeal before this Court.

5. The learned Counsel appearing for the appellants strenuously urged before me that the same area in which new shops are constructed ought to have been offered by the landlord to the present plaintiffs who were erstwhile tenants of the building before demolition.

6. The learned Counsel appearing for the appellants relied upon a decision of this Court in *Lawrence Mascernhas v. Ignatius Pereira*, (1973) 2 Mys.L.J. 105. It is no doubt true that in that decision His Lordship has observed thus:

"Where before demolition or the building there was no upstairs and the tenant was occupying a portion in the ground-floor the is entitled to that area carved out in the ground-floor and not anywhere else."

7. The learned Counsel appearing for the first respondent-defendant, however, invited my attention to the fact that that was an observation made without noticing the earlier decision of this Court under a comparable provision of the Karnataka Rent Control Act, in the case, *Misrilal Parasmall v. H.P. Sadasiviah*, (1963) 1 Mys.L.J. 100. Therein, His Lordship Hegde, J., as he then was, has clearly observed thus:

"There is no provision in the Mysore Act, under which Courts can direct the landlord to reconstruct a building in any particular manner."

Same section is reproduced in the Karnataka Rent Control Act, 1961. Therefore, the ruling rendered by a Single Judge of this Court in the case, *Lawrence Mascernhas v. Ignatius Pereira*, 1973 2 Mys.L.J. 105 referred to supra, on that aspect becomes a ruling per incuriam. That is made further clear by the decision of the same Judge rendered in the case *Narasimaiah v. Srinivasa Rao*, CRP 187/74 dt. 10.10.74. Therein, His Lordship has relied upon 1963(1) Kar.L.J. 100,

which is the, case quoted above rendered by Hegde, J. as also to the decision in A.I.R. 1969 Bom. 119, and has held that after reconstruction, the identity of the old building, has completely disappeared and that all that the tenant was entitled to under Sections 27 and 28 of the Act was to a shop on the ground floor at equal area and he could not insist on occupying the new shop near the staircase where his earlier shop was situate.

8. Therefore, it is clear that the law on the point is that after reconstruction the tenant cannot insist on the landlord to lot out the shop in the same area which he occupied earlier. He has also no right to dictate to he landlord in what shape the building should be constructed after demolition.

9. In the present case, moreover the suit is based on a compromise decree, the relevant clause of which is reproduced above. Therein, it is clearly stated that after completion of the building, the landlord shall offer any shop in the building having dimension of not less than 200 sq.ft. That clearly takes away the choice of the tenant. The choice is of the landlord and that is in accordance with law and the landlord offered shop number 3 which satisfies the description of area which the tenants, namely the present plaintiffs, refused to occupy. Having done so, it is obvious that that they have no right to claim the shops constructed in the area in the building which they previously occupied . The Courts below have held so and I have no reason to differ.

10. In the result, the appeal fails and is dismissed.

In the peculiar facts of the case, I make no order as to costs of this appeal.