

(1988) 07 KAR CK 0064
In the Karnataka High Court
Case No : CRP 3409/88

K. Laxminarayana Adiga and Another APPELLANT
Vs
R. Govindarajulu and Another RESPONDENT

Date of Decision : 15-07-1988

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 30
Specific Relief Act, 1963 — Section 41

Citation : (1988) 3 KarLJ 392

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-This is a plaintiffs' revision petition against the concurrent findings of the lower appellate Court and the trial Court in the matter of refusing interim injunction in a suit brought by them to restrain the respondent-decree-holder from executing his decree obtained against the 2nd respondent who was the tenant.

2. The facts themselves are not in dispute. The petitioners were not parties to the proceedings initiated by the 1st respondent under the provisions of the Karnataka Rent Control Act (hereinafter referred to as the Act) to evict the 2nd respondent. The ground for the eviction petition was that the 2nd respondent-tenant had unauthorisedly sub-let the premises to the present revision petitioners. That decision has become final and conclusive. At the stage of execution, the revision petitioners filed O.S.No.498/1987 on the file of the Principal Munsiff, Udupi for declaration that the decree passed in HRC.No. 40/1979 is not binding on them and the 1st respondent-1st defendant should be restrained from executing the said decree. They also made an application for interim injunction restraining the defendant from executing the decree.

3. It is most unfortunate that both the trial Court and the lower appellate Court have gone into the merits of the suit itself while disposing of the interlocutory matter which was confined to their entitlement to a temporary injunction and no more. It is now settled law that sub-tenant unauthorisedly inducted by the

tenant is not a necessary party in proceedings under the Act. If that is so, then the 1st respondent was not bound to make the petitioners also respondents in his eviction petition before the Court under the Act. Section 30 of the Act provides that notwithstanding anything contained in any other law, where the interest of the tenant in any premises is determined for any reason whatsoever and any order is made by the Court under the Act for the recovery of possession of such premises the order shall subject to the provisions of Section 21, be binding on all persons who may be in occupation of the premises and vacant possession thereto shall be given to the landlord by evicting such persons therefrom, subject to the proviso that nothing in that section will apply to any person who has an independent title to such premises. Therefore, the 1st respondent under special enactment has obtained a right to execute the decree which he has obtained in accordance with the provisions of the Act. Having regard to the non-abstante clause with which the said Section 30 of the Act begins, it should prevail over all other rights which the petitioners may have, if they are admittedly occupants of the premises in question unless they set up independent title to the property in question.

4. Their case is that they are lawfully inducted tenants and therefore the decree is not executable against them. That argument is no more than begging the question. The very issue in the proceedings initiated under the Act was whether the induction of the petitioners was lawful or not and if that is concluded against the 2nd respondent, the main tenant, then it will not be open to the petitioners to once again contend in a separate suit which is barred under the provisions of the Act to agitate the matter of their lawful induction once again as between the landlord and the tenant, the 1st and the 2nd respondents herein.

5. However, Mr. B.V. Acharya, learned Counsel for the petitioner drew by attention to the observations of the Supreme Court in the case of *South Asia Industries Private Ltd. v S. Sarup Singh and Others* [A.I.R. 1966 S.C. 346]. The observations relied upon read as follows:

I am not unmindful of the fact that where an order for recovery of possession of any premises is made under Section 14 against a tenant assigning or sub-letting without the landlord's consent, that order would under Section 25 of the Act be binding on all persons in occupation of the premises except those who have independent title to them. This section does not however say that an order for recovery of possession against an assignee of a lessee cannot be made." (Emphasis supplied)

The learned counsel has relied upon the portion emphasised by me to contend that such an order should have been obtained against the petitioners as well. I do not think the decision can be relied upon to support such a contention. In that case the original tenant, a Company, had gone into liquidation. In that process, the appellant before the Supreme Court-Asia Industries was the assignee of the lease and the eviction proceeding itself was brought against the assignee. It was, in that circumstance, the Supreme Court made that observation which is in

favour of the landlord and not in favour of the tenant. Assignee is not a sub-tenant but a person who has stepped into the shoes of the tenant. If that distinction is borne in mind, then it is not difficult to reject the submission on behalf of the petitioners.

6. Similarly, reliance was placed by the learned Counsel on the decision of this Court in the case of Abdul Azeez v Sakamma [I.L.R. 1987 Karnataka, 498] is not of any assistance to the petitioners. A learned Judge of this Court has no more than reiterated what has been emphasised by me in regard to Section 30 of the Act i.e., unless there is an independent title set up against the landlord then the decree or order of eviction passed under the Act must be given effect to.

7. In any event, what the trial Court and the lower appellate Court have ignored is the express provision contained in Section 41 of the Specific Relief Act i.e., no injunction may be granted to restrain any person from prosecuting a judicial proceeding. Execution of a decree, to my mind, cannot be said to fall outside the scope of judicial proceeding.

8. Therefore, the revision petition is misconceived, the orders of the lower appellate Court and the trial Court do not call for interference. The revision petition's rejected.