

(1985) 12 KAR CK 0019

In the Karnataka High Court

Case No : Civil Revision Petition No. 1079 of 1983

K. Shantharam and Others

APPELLANT

Vs

A. Rama Amin and Others

RESPONDENT

Date of Decision : 19-12-1985

Acts Referred:

Citation : AIR 1987 Kar 1 : (1986) ILR (Kar) 1199

Hon'ble Judges : M.S. Patil, J

Bench : Single Bench

Advocate : Tukaram S. Pai, for the Appellant; B.V. Acharya, for the Respondent

Judgement

1. This is tenant's revision and directed against the order dt. 28-8-1982 passed by the 11 Additional Munsiff, Mangalore, in HRC No. 66/71 and confirmed by the District Judge, Dakshina Kannada, Mangalore, by his order dt. 22-1-1983, in CRP No. 103/82.

2. The short question that arises for decision is: Whether the issue of existence of relationship between the parties as landlord and tenant should be tried as a preliminary issue. The learned Munsiff, following the decision of this Court in the case of Mahammad iqbal Dastagirsab and Others Vs. Mohamadgous Lalamiya Sangolli and Others, has held that such an issue cannot be tried as a preliminary issue. The District Judge also having confirmed the order made by the Munsiff, the tenant has approached this Court.

3. It would appear that some different opinion was expressed in CRP No. 1401/79 decided on 13-7-1983 and the matter has therefore been admitted. I have gone through the said decision. Although the order proceeds on the basis that there are catena of decisions of this Court to support the view point of law that such an issue as to the existence of relationship between the parties as landlord and tenant has to be decided as a preliminary issue, but not a single decision has been referred wherein this Court has laid down that such an issue should be tried as a preliminary issue. The learned single Judge who rendered

the decision in the said case, after referring to provisions contained in O. L of the Civil P. C. and R. 14 of the Karnataka Rent Control Rules, by which the provisions of the Civil P. C. were made applicable to the proceedings under the Rent Control Act, observed that the use of the words as far as may be in R. 14 did not take away the effect of O. L of the C. P. C. and "when O. L, C. P. C makes it absolutely clears that the provisions relating to the settlement of issues which are contained in O. XIV, C.P.C. will not be applicable, the words "as far as may be and with necessary modifications" used in R. 14 will not make O. XIV, R. 2, C.P.C. applicable to the provisions of the H. R. C. Act". With due respect I am unable to agree with this view. In CRP Nos. 1641, 2417 to 2419 of 1982, decided on 10-12-1982, similar contention was advanced and repelling that contention precisely for this reason it has been held that in a summary proceeding like this, the Court is neither required to raise any issue nor try any issue as a preliminary issue. The fact that the provisions of O. 14, R. 2, C. P. C. are not applicable to such proceedings does not mean that the Court should raise and decide such mixed question of law and fact as a preliminary issue. Petitioners in the said case approached the Supreme Court seeking Special Leave to Appeal in S. C. L A. (Civil) No. 3553-77 and the same came to be dismissed in limine on 6-5-1983. In the case of Mahammad Iqbal v. Mohamad Gous Lalimiya, after a review of the earlier decisions of this Court and the principles of law as laid down by the Supreme Court in the case of Major S.S. Khanna Vs. Brig. F.J. Dillon, that the jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issue. Normally all the issues in a suit should be tried by the Court: not to do so, especially when the decision on issues even of law depends upon the decision of issues of fact, would result in a lop-sided trial of the suit and as pointed out by this Court earlier in the case of Kargupikar v. Kulkarni, (CRP No. 985/74, dt. 7-8-1974) where evidence is required on an issue, the Court should not direct it to be tried as a preliminary issue, it has been held that the issue regarding the status as landlord and tenant between the parties is essentially an issue of fact and evidence is required to be adduced to establish the existence of such relationship between the parties. Though a decision on that issue, one way or the other, either may give or take away the jurisdiction of the Court, yet the fact that that is an issue involving jurisdictional fact is not by itself sufficient for the Court to try such an issue as a preliminary issue, inasmuch as an issue requiring evidence is not a preliminary issue that could be so tried. The Courts below have passed the order under revision following the decision of this Court. There is, therefore, no merit at all in this revision and it is liable to be dismissed.

In the result and for the reasons stated above, the revision is dismissed. The matter being fairly old, the Court below is directed to give preference for hearing of the same and if so desired hear the case from day-to-day and dispose of the same as early as possible.

4. Revision dismissed.