

(1989) 11 KAR CK 0004
In the Karnataka High Court
Case No : C.R.P. No. 1622 of 1985

K. Visvanathiah Setty

APPELLANT

Vs

S.R. Chikka Veerappa

RESPONDENT

Date of Decision : 07-11-1989

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 21 (1) (a), 21 (1) (c), 21 (1) (f)

Citation : (1990) ILR (Kar) 498 : (1989) 3 KarLJ 527

Hon'ble Judges : Hakeem, J

Bench : Single Bench

Advocate : S.G. Sundaraswamy, for the Appellant; U.L. Narayana Rao, for the Respondent

Final Decision : Allowed

Judgement

Hakeem, J.—This revision is directed against the order passed by the trial Court rejecting the petitioner's petition for eviction of the respondent herein on the grounds u/s 21(1)(a), (c), (f) and (h) of the Karnataka Rent Control Act, 1961 (the Act).

2. The question that arises for consideration is whether in the facts and circumstances of the case, the trial court was justified in holding that a complicated question as to the existence of the tenancy is involved, which cannot be determined by the Court in its summary jurisdiction under the Act and in directing the parties to establish their rights in a properly instituted suit.

3. The petitioner has sought for eviction of the respondent on several grounds u/s 21(1) of the Act including the ground that the respondent had committed default in payment of rent to the extent of Rs. 11,200/-. The respondent contested the said petition inter alia denying his status as a tenant under the petitioner and pleaded that the relationship between him and the petitioner was that of a debtor and creditor. According to the respondent, the sale deed dated 20-6-1964 was ostensible as it was only intended to create a security for the

repayment of the consideration amount entered in it. Similarly the lease deed dated 20-6-1964 (Ex.P-1) is only to secure payment of interest and not rent as recited therein. The respondent further pleaded that the petitioner had entered into a separate deed of reconveyance agreeing to reconvey the property to him, but the said document was retained by the petitioner by way of security in respect of further loan of Rs. 10,000/- advanced by him under a pronote taken in favour of a relative.

4. On these pleadings the trial Court raised the following preliminary point for consideration:

1) Whether there is a complicated dispute as to the title of the petitioner or as to existence of the tenancy?

The learned trial Judge has upheld the contention that the facts of the case are complicated and as such the parties should be directed to adjudicate their rights regarding title to the property in a civil suit since the Court of summary jurisdiction under the Act is incompetent to decide the complicated question as to the existence of tenancy and the title of the petitioner. The learned trial Judge has also observed that identical points are involved in the suit O.S.No. 1942 of 1984 filed against the petitioner.

5. Sri S.G. Sundaraswamy, learned Senior Counsel for the petitioner raised two contentions viz., that the learned trial Judge erred in law in allowing the respondent to lead parole evidence to the effect that the sale transaction evidenced by Ex.P-2 was not a sale but a mortgage; and secondly that the trial Court has failed to appreciate that in view of the question of jural relationship between the parties having been determined in an earlier suit, the respondent was precluded from raising it once again. On the other hand, Sri U.L. Narayana Rao, learned Counsel for the respondent submitted that there was no bar as such for the respondent to lead evidence to establish that the transaction recorded in the sale deed and the lease deed was not intended to be acted and since it was purely a loan transaction, no title in the property had passed to the petitioner. It is urged that this very question is involved in the suit pending between the parties. Regarding the second contention it is stated that the decrees in (OS.No. 1924 of 1968 and O.S.No. 39 of 1972 being ex- parte there is no bar for" raising this contention. It is further contended by the learned Counsel that if the plea raised by the party against the existence or jural relationship is found to be really complicated, it cannot be resolved in the summary proceeding by the Court.

6. Considerable evidence has been let in by the parties and a number of documents have been produced in support of their respective contentions. The execution of the sale deed Ex.P-2 and the lease deed Ex.P-1 is not disputed. However, the contention of the respondent is that it is an ostensible sale and in reality intended to create security for repayment of the loan. The execution of the lease deed is also not disputed. It is further admitted that the respondent was in fact paying a sum of Rs. 200/- per month to the petitioner till the year

1967 and obtaining receipts for the same from the respondent. In all the receipts the said payment has been described as the rent for the premises. The petitioner had sought for eviction of the respondent in H.R.C.No. 10005 of 1967 (later renumbered as H.R.C. No. 82 of 1976). The proceedings ultimately came to be terminated by the order in C.R.P.No. 712 of 1979, whereby the petitioner was permitted to withdraw the eviction petition with liberty to file a fresh one. The instant petition is filed on similar grounds Including the ground under Clause (a) of Section 21(1) of the Act. It is thus seen that the denial of tenancy and the title of the petitioner was made for the first time by the respondent in the year 1967 when the petitioner filed the petition for his eviction. The petitioner had also filed two suits against the respondent for recovery of rents. The first suit is O.S.No. 1924 of 1968 on the file of the 5th Additional First Munsiff, Bangalore, for recovery of rents which came to be decreed ex-prate on 30-3-1971. The second suit is O.S.No. 39 of 1972 on the file of the First Munsiff, Bangalore. It appears that the said suit which was contested in the beginning was later decreed ex-prate.

7. The respondent does not deny the execution of the sale deed Ex.P-2 and the consideration received thereunder nor does he dispute the execution of the lease deed either. From the pleading and the evidence, his specific stand appears to be that the said sale deed was in the nature of mortgage to secure repayment of the amount of consideration stated therein and the lease deed was merely to secure payment of monthly interest. The respondent has further pleaded that a deed of reconveyance was executed by the petitioner under which he had agreed to reconvey the property on repayment of the amount after a period of 5 years, but before 20 years it is alleged that the said deed of reconveyance was taken back by the petitioner as a security for the additional loan of Rs. 10,000/- advanced to him by the petitioner benami through his close relative by name Narayana Shetty in whose favour a pronote was also executed. While there is no reference regarding the alleged time limit for reconveyance either in his statement of objection or in his pleadings in the earlier eviction proceedings or suit, it is pleaded for the first time in his suit. It is clear from the copy of the plaint (Ex.P-12) that it is essentially a suit for specific performance of the alleged agreement in which the main prayer is to direct the petitioner herein to execute a reconveyance deed in favour of the respondent in respect of the property after receiving Rs. 23,000/- and the balance of interest, if any. However, the second prayer in the suit is for declaration that the transaction evidenced by the sale deed and the lease deed have arisen out of a loan transaction. Considering the nature of the defence raised in the instant proceedings in the light of the main relief sought in the said suit, all that can be inferred in favour of the respondent is that he may have a personal right to seek specific performance of the agreement to reconvey the property. The genuineness and the existence of such a written agreement and the right, if any, of the respondent has to be determined in the said suit. While the cause of action in the suit for specific performance is the alleged agreement of reconveyance, refusal of performance

and willingness on the part of the purchaser to do his part of the contract, whereas in the eviction proceedings, the cause is based on one or more of the grounds u/s 21(1) of the K.R.C. Act. The eviction petition is based on the existence of the relationship of landlord and tenant and in such a proceeding there can be no investigation regarding the title to the property.

8. In *Pratapsingh Vs. Jaibunnisa Begum*, it is held thus:

"15. Whether question raised about the title of the petitioners is a complicated one or not, will be a mixed question of fact and law the nature of the plea, facts giving rise to such a plea genuineness of the plea, material placed by the parties and various circumstances of the case, will go into the consideration of this question.

16. If it is found to be really a complicated question, and was raised bona fide, it will be unfair to be resolved in a summary proceeding by the Court as defined under the Act. The Act, does not vest any exclusive jurisdiction in the said Court to decide the question of title while considering first proviso to Section 8(1) of the Mysore House Rent and Accommodation Control Act, 1957 (which was the predecessor to the present Act, in the Old Mysore area), Justice Somnath Iyer, (as he then was) observed in *M. THAMMIAH v. K.V. SUBBA RAO* [1964(2) Mys LJ 356], that, -

"If there is a bona fide dispute between the parties as to the existence of such relationship between the parties, the Court exercising special jurisdiction u/s 8 of the Act cannot decide that question; nor can the Court proceed with the petition for eviction on the basis that such relationship exists between the parties. It is not every denial by the tenant or the title of the landlord that prevents the Court from exercising special jurisdiction u/s 8 of the Act. If such denial by the tenant is found to be frivolous or obviously untenable, this Court is not precluded from exercising its special jurisdiction u/s 8 of the Act. But, if the denial by the tenant of the landlord's title is bona fide, the question of the title of the landlord can only be determined by a civil Court and not by the Court exercising special jurisdiction under the Act."

In that case the tenant disputed the title of the petitioners to seek possession of the premises on the ground that neither the petitioners nor their predecessors-in-title had recovered any rent from the respondent for more than 70 years. It was pointed out that long possession, non-payment of rent alienations of portions of the premises, putting up of permanent structures, inaction even after denial of the right to recover rent are pointers to extinguishment of title, if any, in the landlords. In the facts and circumstances of that case the Division Bench ultimately came to the conclusion that the tenant was entitled to raise the plea regarding lack of title in the landlord, which was held to be complicated and bona fide one and the question therein involved was complicated one which could not be validly determined by a Court of summary jurisdiction. In the instant case the lease deed executed in the year 1964 was acted upon. Admittedly the

respondent paid the rent at the rate of Rs. 200/- p.m. to the petitioner for about three years and obtained receipts from him. In all the receipts such payment has been described as the rent for the premises. In the year 1967 the petitioner had also sought for eviction of the respondent, which proceeding came to be finally terminated by the order in C.R.P.No. 712 of 1979 permitting the petitioner to withdraw the eviction petition with liberty to file a fresh one as he was likely to fail on a technical ground. The instant petition is filed in pursuance of the same. Considering the nature of the plea, the material placed and the circumstances of the case emerging out of the evidence on record, no such complicated question as to the existence of relationship of landlord and tenant between the parties is involved to oust the jurisdiction of the Court.

9. This takes me to the question whether the respondent's plea regarding the denial of jural relationship is barred under the principles of res-judicata. It is well settled that to establish the plea of resjudicata the following conditions must be satisfied viz.,

- (i) That the litigating parties in the former suit must be the same;
- (ii) That the subject matter of the suit must be identical;
- (iii) That the matter must be finally decided between the parties; and
- (iv) That the suit must be decided by a Court of competent jurisdiction.

It is held in Syed Mohd. Salie Labbai (Dead) by L.Rs. and Others Vs. Mohd. Hanifa (Dead) by L. Rs. and Others, that the best method of deciding the question of resjudicata is first to determine the case of the parties in the previous suit and then to find out as to what had been decided by the Judgment which operate as resjudicata.

10. In the instant case two successive suits were filed by the petitioner for recovery of rent. The first suit is O.S.No. 1984 of 1968 and the second suit is O.S.No. 39 of 1972. In the first suit the respondent appeared and filed written statement as per Ex.P-22 taking similar contentions. Exs.P-19, 20 and 21 are the certified copies of the plaint, written statement and the issues. The said suit was later decreed ex-prate on 13-7-1983. On the pleadings the Court had inter alia raised the following issues:

- (1) Whether the plaintiff proves relationship of landlord and tenant?
- (2) Whether the plaintiff has received any amount?
- (3) Whether the suit is not maintainable without seeking the declaratory relief as alleged in para-7 of the written statement.

It appears to be a settled principle that even ex-prate decrees do constitute resjudicata if the issue involved is one which constitutes the basis or foundation of the decree. Vishnu Sugar Mills Ltd. Vs. I.S.P. Trading Co.,

11. In this view of the matter it seems to me that the Issue regarding the

existence of jural relationship between the parties having been determined in an earlier suit the said question is not open for further adjudication. However, the right of the respondent, if any, under the alleged agreement of reconveyance to seek specific performance thereof, is yet to be determined in the suit filed by him. As observed in *M. Chidambaram Vs. N. Sargunam*, the subject matter of the two proceedings being distinct, each proceeding has to be conducted to its end. It may be that the tenant may lose his possession in the rent control case in which event he may have to amend his relief in the suit to seek possession. In the event of the decree being made in his favour. The issues in the two proceedings are distinct and the reliefs to be granted are also different.

12. The trial Court has relied upon certain circumstances such as the construction of a property in a portion of the premises and the belated change of katha in the corporation records. However, such circumstances at the most may be relevant for considering the respondent's claim in the suit for reconveyance and not germane to the issue regarding the existence of tenancy which, as stated earlier, has been determined in the earlier suit O.S.No. 39 of 1972 filed by the petitioner. The said circumstances ipso facto do not indicate involvement of complicated question of title regarding the property or to hold that denial of title in the facts and circumstances is bona fide. In that view of the matter the trial Court was not justified in holding that a complicated question as to the existence of tenancy is involved, which cannot be determined by it and referring the parties to establish their rights in the civil suit.

13. In the result, the C.R.P. is allowed. The impugned order is set aside. The matter is remitted to the trial Court for fresh disposal of the landlord's claim for eviction of the respondent on merits in accordance with law. In the circumstances the parties shall bear their own costs.